

United States
Circuit Court of Appeals

For the Ninth Circuit.

MARY N. LUCAS,

Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M.
SCOTT, a Minor, RUBENA F. SCOTT, a
Minor, and THE BISHOP TRUST COM-
PANY, LIMITED, a Corporation, Guardian
of the Estate of Said WALTER W. SCOTT,
JANET M. SCOTT and RUBENA F.
SCOTT, Minors,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the Supreme Court of the
Territory of Hawaii.

Filed

AUG 12 1916

F. D. Monckton,

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Acceptance of Service.	146
Acceptance of Service of Papers on Writ of Error	126
Acceptance of Service of Praecipe for Tran- script of Record.....	137
Affidavit of Antonio Perry.....	99
Amendments to Agreed Statement of Facts....	76
Assignment of Errors.....	100
Certificate of Clerk to Transcript of Record and Return to Writ of Error.....	149
Citation on Writ of Error.....	122
Citation on Writ of Error.....	141
Direction for Service.....	124
Direction for Service of Papers on Writ of Error	143
Direction Re Printing of Record in Appellate Court	151
Dissenting Opinion of Robinson, C. J.	90

EXHIBITS:

Exhibit "A" to Agreed Statement of Facts —Copy of Schedule of Properties Be- longing to Christian Henry Bertelmann....	17
Exhibit "B" to Agreed Statement of Facts	

Index.	Page
EXHIBITS—Continued:	
—Copy of Will of Christian Henry Bertelmann	19
Exhibit “C” to Agreed Statement of Facts	
—Deed, March 5, 1910, Bertelmann to Lucas	25
Exhibit “D” to Agreed Statement of Facts	
—Deed, September 12, 1907, Bertelmann to Lucas	29
Exhibit “E” to Agreed Statement of Facts	
—Mortgage, August 3, 1900, Bertelmann to Magoon, etc.	34
Exhibit “F” to Agreed Statement of Facts	
—Mortgage, January 23, 1901, Bertelmann to Kobayashi	38
Exhibit “G” to Agreed Statement of Facts	
—Assignment of Mortgage, August 18, 1902, Kobayashi	41
Exhibit “H” to Agreed Statement of Facts	
—Assignment of Mortgage, August 28, 1902, Peterson to Lucas	42
Exhibit “I” to Agreed Statement of Facts	
—Mortgage, August 13, 1902, Bertelmann to Lucas	44
Exhibit “J” to Agreed Statement of Facts	
—Supreme Court Execution, December 16, 1902, in Washington Mercantile Co. v. Bertelmann	50
Exhibit “K” to Agreed Statement of Facts	
—Deed, February 7, 1903, High Sheriff of Territory of Hawaii to Lucas	52

EXHIBITS—Continued:

Exhibit "L" to Agreed Statement of Facts	
—Deed, March 14, 1903, Smith to Lucas.	55
Exhibit "M" to Agreed Statement of Facts	
—Deed, May 18, 1903, Bannister to Lucas	59
Exhibit "N" to Agreed Statement of Facts	
—Deed, October 12, 1904, Ross to Lucas	63
Exhibit "O" to Agreed Statement of Facts	
—Deed, January 16, 1907, Hogan to Lucas	67
Exhibit "P" to Agreed Statement of Facts	
—Deed, November 29, 1915, Baker to Lucas	71
Judgment	94
Notice of Service of Statement of Errors and Record Relied upon on Writ of Error.....	131
Opinion	81
Order Allowing Writ of Error and Supersedeas.	118
Order Extending Time for Preparation and Transmission of Record	128
Order Extending Time for Preparation and Transmission of Record.	147
Petition for Writ of Error and Supersedeas....	98
Praecipe for Transcript of Record.....	133
Return of Service	144
Return of Service of Papers on Writ of Error..	125
Statement of Case	1
Statement of Errors and Record Relied Upon...	130
Supersedeas and Cost Bond on Writ of Error...	115
Writ of Error	120
Writ of Error	139

In the Supreme Court of the Territory of Hawaii.
October Term, 1915.

(\$2.00 Stamps.)

BEFORE THE JUSTICES OF SAID COURT.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LTD., a Corporation, Guardian of the Estate of Said WALTER W. SCOTT, JANET M. SCOTT, and RUBENA F. SCOTT, Minors,

Plaintiffs,

vs.

MARY N. LUCAS,

Defendant.

Statement of Case.

SUBMISSION ON CASE AGREED.

To the Honorable the Justices of the Supreme Court
of the Territory of Hawaii:

Walter W. Scott, Janet M. Scott, and Rubena F. Scott, minors, and the Bishop Trust Company, Limited, a corporation created and existing under the laws of Hawaii, guardian of the estate of the said Walter W. Scott, Janet M. Scott, and Rubena F. Scott, minors as aforesaid, the plaintiffs herein, and Mary N. Lucas, the defendant herein respectively represent as follows:

1. That they are parties to a question in difference which might be the subject of a civil action or actions in one or more of the Circuit Courts of this Territory,

that they have agreed upon a case or statement containing the facts upon which the controversy between the said parties depends and that they hereby present a submission of the said case, statement and controversy to the Justices [1*] of the above-entitled court for decision and judgment; and that the controversy existing between them as aforesaid is real and that these proceedings are brought and this submission made in good faith to determine the rights of the parties.

2. That one Christian Henry Bertelmann, late of Pilaa, Kauai, died at said Pilaa on or about February 15, 1895, and that at the time of his death he was seized in fee simple of all of those certain pieces or parcels of land and other property described in Exhibit "A" hereunto attached and hereby made a part hereof.

3. That the said Christian Henry Bertelmann left surviving him three sons, Frank Charles Bertelmann, Henry Godfrey Bertelmann, and Christian Sylvester Bertelmann, and six daughters, Catherine Haunani Bertelmann, Justine Ludovica Dorothea Maihui Bertelmann, Mary Josephine Hattie Ke'hukalani Bertelmann and Beatrice Bertelmann.

4. That the said Catherine Haunani Bertelmann, daughter as aforesaid of the said Christian Henry Bertelmann, and who was the wife of one Frank Scott, died on or about September 19, 1905, leaving surviving her three children, the said Walter W. Scott, Janet M. Scott, and Rubena F. Scott, who are plaintiffs herein; that Frank Scott, the husband of

*Page-number appearing at foot of page of original certified Record.

said Catherine Bertelmann Scott and father of the three minors aforesaid died on or about January 13, 1908; and that Susan C. Bertelmann, the widow of said testator, the aforesaid Christian Henry Bertelmann, died on or about September 2, 1915.

5. That on or about May 14, 1908, the plaintiff, the Bishop Trust Company, Limited, was duly appointed guardian of the estate of the three minors aforesaid and is still their duly appointed, qualified and acting guardian as aforesaid.

6. That the said Christian Henry Bertelmann at the time of his death left a will, a copy of which marked Exhibit "B" is hereto attached and is hereby made a part hereof, which said will was duly admitted [2] to probate in the Circuit Court of the Fifth Judicial Circuit on or about April 18, 1895.

7. That on or about March 5, 1910, Henry Godfrey Bertelmann, son as aforesaid of the said Christian Henry Bertelmann, in consideration of Fifteen Thousand (\$15,000.00) Dollars to him paid by the defendant herein, Mary N. Lucas, executed and delivered to the said defendant a deed, a copy of which marked Exhibit "C" is hereto attached and is hereby made a part hereof, which said deed is recorded in the office of the Registrar of Conveyances in Honolulu, Oahu, Territory of Hawaii, in Book 332, on page 16, and which said deed conveys the same lands and other property which are described in Exhibit "A" aforesaid; and that Maggie Bertelmann, wife of said Henry Godfrey Bertelmann, did join in the said deed and did therein release and quitclaim unto the said Mary N. Lucas all of her right and pos-

sibility of dower in the said premises thereby conveyed by her said husband.

8. That on or about September 12, 1907, the said Christian Sylvester Bertelmann, son as aforesaid of the said Christian Henry Bertelmann, and being at the time unmarried, in consideration of Fifteen Thousand (\$15,000.00) Dollars to him paid by the said defendant, executed and delivered to the defendant herein, Mary N. Lucas, a deed, a copy of which marked Exhibit "D" is hereto attached and is hereby made a part hereof, and which said deed is recorded in the office of the said Registrar in book 292, on pages 498 to 500, and which said deed conveys the same lands and other property described in Exhibit "A" aforesaid.

9. That on or about August 3, 1900, the said Frank Charles Bertelmann, son as aforesaid of said Christian Henry Bertelmann, executed and delivered to J. Alfred Magoon of said Honolulu in consideration of the payment to him by said Magoon of the sum of Fifteen Hundred (\$1,500.00) Dollars a mortgage, a copy of which marked Exhibit "E," is hereto attached and is hereby made a part hereof, which said [3] mortgage is recorded in the office of said Registrar in book 213 on pages 222 to 224; and that Mary Bertelmann, wife of said Frank Charles Bertelmann, did join in the said mortgage in this paragraph referred to and did therein release and quitclaim unto the said mortgagee all of her right and possibility of dower in the premises thereby conveyed and mortgaged by her said husband, Frank Charles Bertelmann, that said mortgage was on or about July 11,

1902, by the said J. Alfred Magoon assigned to the defendant herein, Mary N. Lucas, in consideration of the payment by her to him of the sum of One Thousand Nine Hundred Ninety-seven and 45/100 (\$1997.-45) Dollars, which said instrument of assignment is recorded in the office of said Registrar in book 213 on page 223, and which said mortgage conveys and mortgages the same lands and other property described in Exhibit "A" aforesaid.

10. That on or about January 23, 1901, the said Frank Charles Bertelmann in consideration of Three Hundred and Twenty-five (\$325.00) Dollars to him paid by one S. Kobyashi, executed and delivered to said S. Kobyashi, a mortgage, a copy of which marked Exhibit "F" is hereto attached and is hereby made a part hereof, which said mortgage is recorded in the office of the said Registrar in book 215 on pages 456 to 458, and conveys and mortgages the same lands and other property described in Exhibit "A" aforesaid; and that Mary Bertelmann, wife of said Frank Charles Bertelmann, did join in the said mortgage in this paragraph referred to and did therein release and quitclaim unto the said mortgagee all of her right and possibility of dower in the premises thereby conveyed and mortgaged by her said husband, Frank Charles Bertelmann; that said mortgage was on or about August 18, 1902, assigned by said S. Kobyashi to one D. L. Peterson, in consideration of One (\$1.00) Dollar to him paid by said Peterson, and said assignment, a copy of which is hereto attached marked Exhibit "G," and is hereby made a part hereof, is recorded in [4] the office of said Registrar

in book 215 on page 457; that said mortgage was on or about August 28, 1902, assigned by said D. L. Peterson to said Mary N. Lucas, the defendant herein, in consideration of the payment of the full sum then secured by the said mortgage, and said last mentioned assignment, a copy of which is hereto attached marked Exhibit "H" and is hereby made a part hereof, is recorded in the office of the said Registrar in book 215 on page 457.

11. That on or about August 13, 1902, the said Frank Charles Bertelmann, in consideration of Nine *Thousand Eight Hundred and Twenty-five* (\$9,845.-00) Dollars to him paid by the said Mary N. Lucas, the defendant herein, executed and delivered to the said Mary N. Lucas a mortgage, a copy of which marked Exhibit "I" is hereto attached and hereby made a part hereof, which said mortgage is recorded in the office of said Registrar in book 236 on pages 372 to 375, and conveys and mortgages the said lands and other property described in Exhibit "A" aforesaid; and that Mary Bertelmann, wife of said Frank Charles Bertelmann, did join in the said mortgage in this paragraph referred to and did therein release and quitclaim unto the said mortgage all of her right and possibility of dower in the premises thereby conveyed and mortgaged by her said husband, Frank Charles Bertelmann.

12. That none of the mortgages hereinabove mentioned have ever been paid in whole or in part by the mortgagor or released by the said mortgagees or any of them or assigned by the said Mary N. Lucas.

13. That on or about October 30, 1902, the Washington Mercantile Company, a corporation created and existing under the laws of Hawaii, brought its action against the said Frank Charles Bertelmann in the District Court of Honolulu, Oahu, before the District Magistrate of District Court of Honolulu; that the service of the declaration and summons in said action was made upon the defendant therein personally and that after such personal service as aforesaid the said Washington [5] Mercantile Company duly recovered in said action in its favor and against said Frank Charles Bertelmann judgment in the total sum of Eighty and 12/100 (\$80.12) Dollars, and that thereafter execution was duly issued in said action out of said District Court for the satisfaction of said judgment; that said execution was returned wholly unsatisfied and no property, either real or personal, was found by the officer entrusted with the levy of the execution aforesaid upon which he could levy said execution; that thereafter and on or about December 16, 1902, the plaintiff in the said action, after execution had been issued as aforesaid by the said District Magistrate and had been returned wholly unsatisfied and after the officer attempting to levy the same found that there was no property, either real or personal, belonging to the defendant aforesaid in the action within the jurisdiction of the said magistrate, procured a certified copy of the judgment and of the execution aforesaid, together with a certified copy of the return of the officer charged as aforesaid with the duty of

levying the said execution which said writ showed that he could find no property, real or personal, of the defendant in the said action upon which the execution issued by said District Magistrate could be levied, and that he thereby returned the said execution wholly unsatisfied, and docketed the said certified copies of judgment, execution and return aforesaid in the office of the clerk of the Supreme Court of the Territory of Hawaii, and thereupon sued out of said Supreme Court a writ of execution, a copy of which marked Exhibit "J" is hereto attached and hereby made a part hereof, which was duly issued out of said Supreme Court on or about December 16, 1902, for the sum aforesaid of Eighty and 12/100 (\$80.12) Dollars, Two (\$2.00) Dollars cost of execution in said District Court, Forty (\$.40) Cents interest, and Five (\$5.00) Dollars cost of execution in the said Supreme Court, or a total sum of Eighty-seven and 52/100 (\$87.52) Dollars. [6]

14. That upon receipt of the said execution so issued out of the Supreme Court, the Deputy Sheriff of the Territory of Hawaii, who was charged with the duty of levying the same, searched for personal property of the defendant upon which levy could be made but found none.

15. That thereafter and on or about December 31, 1902, the said Deputy Sheriff of the Territory of Hawaii did, under said execution issued by the Supreme Court aforesaid, levy upon all of the right, title and interest of the said Frank Charles Bertelmann, defendant in the action aforesaid, in and to all of the lands and other property described in Exhibit

“A” hereinabove mentioned, and did, for fully thirty (30) days prior to the day of sale hereinafter referred to, post in at least three conspicuous places in the District of Hanalei (Kauai), in which certain of said lands and property are situate, and in at least three conspicuous places in the District of Kawaihau (Kauai), in which the others of the said lands and property are situate, post notices of levy and of sale and did on four different days, the first of which was December 31, 1902, and the last of which was February 6, 1903, publish a notice of sale in the “Hawaiian Star,” a newspaper of general circulation on the Island of Oahu and throughout the Territory of Hawaii, and printed and published at Honolulu in the English language, all of which said notices so posted in the two districts aforesaid and in the newspaper aforesaid described the property to be levied upon and the time and place of sale.

16. That on Saturday, February 7, 1903, at twelve o'clock noon, at the Police Station, Kalakaua Hale, in Honolulu, Oahu, the same being the time and place named in the various notices of sale so posted and published as aforesaid, said Deputy Sheriff of the Territory of Hawaii did offer for sale at public auction all of the right, title and interest of the said Frank Charles Bertelmann in and to all of the lands and other property in said Exhibit “A” described [7] that Mary N. Lucas, the plaintiff herein, bid the sum of Eighty (\$80.00) Dollars, and that the said sum so bid was the highest, last and best bid made at said sale and that at said sale the property so advertised as aforesaid was sold to the said Mary N.

Lucas; that on said seventh day of February, 1903, after said sale, Arthur M. Brown, High Sheriff of the Territory of Hawaii, did execute and deliver to the said Mary N. Lucas a deed, a copy of which marked Exhibit "E" is hereto attached and hereby made a part hereof, conveying and assigning to the said Mary N. Lucas in consideration of the sum of Eighty (\$80.00) Dollars as aforesaid, all the right, title and interest of the said Frank Charles Bertelmann in and to all of the lands and other property described in said Exhibit "A" hereto attached, which said deed is recorded in the office of said Registrar in book 248 on pages 82 to 84.

17. That subsequent to the death of the said Christian Henry Bertelmann, testator as aforesaid, the said Justine Bertelmann who later became Justine Bertelmann Smith, the wife of William J. Smith; Mary Josephine Hattie He'hukalani Bertelmann, who later became Mary Josephine Hattie Bertelmann Bannister, wife of Andrew T. Bannister; Beatrice Bertelmann, who later became Beatrice Bertelmann Ross, the wife of Rideau G. Ross; Mary Angeline Kanikela Bertelmann, who later became Angeline K. Hogan, the wife of Joseph J. Hogan; and Mary Wilhelmine Bertelmann, who later became Wilhelmine B. Baker, the wife of Charles H. Baker, daughters as aforesaid of the said Christian Henry Bertelmann, did sell and convey to the said defendant, Mary N. Lucas, each by a conveyance duly executed, acknowledged, delivered and recorded, and assented to in writing by their respective husbands and each for a valuable consideration all of the right, title, and

interest, estate claim and demand, vested or contingent, then present or prospective, in law or in equity, of them and each of them in and to all of the lands and property described in Exhibit "A" aforesaid; and that the said Mary N. Lucas, defendant as aforesaid, [8] has not in any way alienated or parted with any part of the lands, rights or other property so conveyed to her by the said five daughters of the said testator as aforesaid or by any of them or any interest therein, but is still the holder and owner of all of said lands and property so conveyed by all of the said five daughters and each of them and every part thereof. Copies of the five conveyances in this paragraph referred to, so made as aforesaid by the five daughters in this paragraph mentioned, are hereto attached, marked respectively Exhibits "L," "M," "N," "O," and "P," and are hereby made parts hereof.

18. That by indenture dated November 1, 1890, and recorded in the office of the said Registrar in book 128 on pages 205 to 208, the said Christian Henry Bertelmann demised and leased to the Kilauea Sugar Company, a corporation created and existing under the laws of Hawaii, all of the same lands and other property described in Exhibit "A" aforesaid "for and during the term of Twenty-five (25) years from the first day of November, A. D. 1890, fully to be complete and ended"; that the said demise and lease was not at any time or in any way revoked, cancelled or surrendered, and that its term of twenty-five (25) years therein prescribed as aforesaid was not at any

time or in any way shortened, but that on the contrary as to all of the lands and other property thereby demised and leased, the said demise and lease continued in full force and effect for the full term for and during which it was, by its own terms, to continue in force and effect, and that the said lease for this paragraph mentioned is the same lease for twenty-five (25) years referred to in said will of Christian Henry Bertelmann and in said will variously described as "Agreement and Lease of all my lands * * * made by myself with the Kilauea Sugar Company, Limited, for the term of 25 years" and "twenty-five years' lease to the Kilauea Sugar Company."

19. The questions at issue between the said Walter W. Scott, [9] Janet M. Scott, and Rubena F. Scott, plaintiffs herein as aforesaid, on the one hand, and Mary N. Lucas, the defendant herein, on the other hand are the following:

(a) Under the terms of the will aforesaid of the said Christian Henry Bertelmann, and particularly under the terms of the paragraph or article thereof marked "Third," are the said three minor children of Catherine Haunani Scott entitled to receive from the said Mary N. Lucas, grantee and assignee as aforesaid of the three sons aforesaid of the said Christian Henry Bertelmann, the sum of Five Thousand (\$5,000.00) Dollars which their mother would have been entitled to receive from the said three sons or their grantee and assignee had she survived the expiration of the twenty-five (25) year lease made by the said Christian Henry Bertelmann to the Kilauea

Sugar Company and referred to in the said will of the said Christian Henry Bertelmann?

(b) Did the fact of the death of the said Catherine Haunani Scott, before the expiration of said twenty-five (25) year lease, although she survived the testator, remove and terminate any right which said Catherine Haunani Scott might otherwise have had to receive said sum of Five Thousand (\$5,000.00) Dollars and any duty which the three sons aforesaid of the said Christian Henry Bertelmann or their grantee and assignee might otherwise be under to pay said sum of Five Thousand (\$5,000.00) Dollars, in other words,

(c) Were the right and the duty mentioned in paragraphs "a" and "b" hereof made contingent upon the survival of each of the daughters, including the said Catherine Haunani Scott, until and at the expiration of the said twenty-five (25) year lease or were they contingent upon the survival of each of the daughters, including the said Catherine Haunani Scott, merely until and at the death of the testator aforesaid?

(d) Have the said Walter W. Scott, Janet M. Scott, and Rubena F. Scott, minor children as aforesaid of the said Catherine Haunani Scott, now any right, title, interest, estate, claim or demand in or [10] to any of the lands of the said testator referred to in paragraph or article marked "Third" in his said will or in or to any sum or payment of Five Thousand (\$5,000.00) Dollars referred to or provided for in said paragraph or article marked "Third" in said will?

And, if so, what right, title, interest, estate, claim or demand have they and each of them in and to said lands or (and) in and to said sum or payment of Five Thousand (\$5,000.00) Dollars.

(e) In order that the said Mary N. Lucas, the defendant herein, may be the undisputed owner, i. e., the owner in fee simple absolute and indefeasible, of all of the lands of the said testator referred to in said paragraph or article marked "Third," is it necessary for her to pay to the said three minor children of said Catherine Haunani Scott the sum of Five Thousand (\$5,000.00) Dollars or any other sum or is she now such undisputable owner without making any payment of said sum or any other sum to the said three minors or any of them?

20. The parties hereto do hereby stipulate that if the decision of the court shall be that the three children aforesaid of the said Catherine Haunani Scott have, and each of them has, now no right, title, interest, estate, claim or demand in or to the said lands of the said testator referred to in said paragraph or article marked "Third" in the will or in or to any payment or sum of Five Thousand (\$5,000.00) Dollars, final judgment be entered herein, in substance and as nearly as may be in form as though this were an action to quiet title, declaring that the said three minor children have not, nor have any of them, any right, title, interest, estate, claim or demand in or to the said lands in this paragraph mentioned or any of them or in or to any payment or sum of Five Thousand (\$5,000.00) Dollars under said paragraph or article marked "Third" in the said will or under

any other provision of the said will, and that as against the said three minors the said defendant, Mary N. Lucas, is now the undisputable owner of all of the said lands of said testator, and every part thereof, set [11] forth in said Exhibit "A," and is the owner thereof in fee simple, absolute and indefeasible.

21. The parties hereto do hereby further stipulate that if, on the other hand, the decision of the court shall be that the three children aforesaid of the said Catherine Haunani Scott have now in the aggregate a one-ninth undivided interest in the lands and other property in said Exhibit "A" described and that in order that the said defendant may become the undisputable owner of all of the said lands and property, it is necessary under the said paragraph or article marked "Third," in the said will of the said Christian Henry Bertelmann to pay to the three minors aforesaid in the aggregate the sum of Five Thousand (\$5,000.00) Dollars, final judgment be entered herein, in substance and as nearly as may be in form as though this were an action to quiet title, declaring that the said three minors have in the aggregate an undivided one-ninth interest in the said lands and property subject to be defeated by and upon the payment to them by said Mary N. Lucas, her heirs or assigns, before November 1, 1916, of the sum of Five Thousand (\$5,000.00) Dollars, and that they are entitled to receive from the said Mary N. Lucas, before the said interest of said minors can be wiped out, the aggregate sum of Five Thousand (\$5,000.00) Dollars; and further declaring that as

against the said minors the said defendant herein is the owner of an undivided eight-ninths interest in all of the said lands and other property and of the right to acquire the one-ninth interest outstanding as aforesaid in the said three minors by paying to them at any time prior to November 1, 1916, the said sum of Five Thousand (\$5,000.00) Dollars.

22. It is further stipulated by the parties herein that it is their desire that if the court shall be of the opinion that some material fact, or facts, which is or are necessary to a decision herein is not agreed upon or recited herein or that in some other respect in matter of form this submission is defective, the parties herein shall [12] be given an opportunity to amend this submission so as to correct any defect that may be so found herein by the Court and in order that this submission shall not be dismissed by reason of any such imperfection of form.

Dated, Honolulu, T. H., February 4, 1916.

Respectfully submitted,

WALTER W. SCOTT, a Minor,

JANET M. SCOTT, a Minor,

RUBENA F. SCOTT, a Minor,

By BISHOP TRUST CO., LIMITED, [Seal]

(Sgd.) JAS. L. COCKBURN,

Its Secretary,

(Sgd.) WILLARD E. BROWN,

Its Treasurer,

Guardian of the Property of said Minors.

(Sgd.) MARY N. LUCAS.

Territory of Hawaii,
City and County of Honolulu,—ss.

Antonio Perry, being first duly sworn, on oath deposes and says: That he is the attorney for Mary N. Lucas, the defendant herein; that for three months and more last past he has transacted the business of the said defendant, with reference to the matters in this submission referred to, with the representatives of the said three [13] minor children of the said Catherine Haunani Scott; that the controversy herein submitted to the Court for determination is real; and that these proceedings are brought in good faith to determine the respective rights of the parties herein; and that he makes this affidavit of his own knowledge.

(Signed) ANTONIO PERRY.

Subscribed and sworn to before me this 4th day of February, 1916.

[Notarial Seal]

(Signed) CATHERINE M. CLARK,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [14]

**Exhibit "A" to Agreed Statement of Facts —Copy
of Schedule of Properties Belonging to Christian
Henry Bertelmann.**

All of the following tracts and parcels of land and other property situated on the Island of Kauai, to wit:

1. The Ahupuaa of Kahili containing an area of 1789 acres more or less; being the same premises

described in Royal Patent — Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Henry Bertelmann, late of Pilaa, Kauai, now deceased, by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86 folios 220.

2. The Ahupuaa of West Waiakalua containing an area of 332 40/100 acres more or less, being premises also conveyed to said Christian Henry Bertelmann by said deed.

3. The Ahupuaa of Pilaa containing an area of 1520 acres more or less; being the same premises described in Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Henry Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5, 1878, of record in the Hawaiian Registry of Deeds in Liber 53 folio 284.

4. All of that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres more or less; being the same premises conveyed to said Christian Henry Bertelmann by deed of Wm. Worner, dated March 31, 1883, of record in the Hawaiian Registry of Deeds in Liber 79 folio 386-387.

5. Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

6. All kuleanas belonging to the said Christian Henry Bertelmann situated within or adjacent to the boundaries of any of the above described premises and all other parcels and tracts of land upon

the Island of Kauai owned by the said Christian Henry Bertelmann at [15] the time of his death.

7. All streams of water and water rights upon or appurtenant to all and singular the above mentioned premises.

8. All leases of any portion of said premises made by Christian Henry Bertelmann together with all rents, remainders, and reversions of the same. [16]

**Exhibit "B" to Agreed Statement of Facts—Copy
of Will of Christian Henry Bertelmann.**

Know all men by these presents, that I, Christian Henry Bertelmann of Pilaa, Island of Kauai, Hawaiian Islands, being of sound mind and memory; do make, publish and declare my last will and testament in manner following.

First. In consideration of agreement and lease of all my lands (except 100 acres actually fenced off and two acres of taro land at Kahili) made by myself with the Kilauea Sugar Co. for the term of twenty-five years commencing November 1st 1890 and ending Nov. 1st, 1915; at the rate of six thousand Dollars (\$6,000.00) per annum, payable quarterly in advance; I make the following arrangements.

I give, divide and bequeath said rents as follows:

1° To my lawful wife Susan C. Bertelmann a life rent of two thousand Dollars (\$2,000.00) yearly; payable quarterly; being one-third of the above mentioned rent of \$6000.00, or in case of any possible change in the actual agreement with the Kilauea Sugar Co., an equivalent of one-third of all net receipts or income of the lands now rented to the Kilauea Sugar Co. In case of Susan C. Bertelmann

death the above mentioned income of \$2000.00 a year, or equivalent of one third as her distributive share of Dower would be equally divided amongst my children or surviving children.

2° To each and every one of my children or surviving children an equal share of the four thousand Dollars (\$4000.00) or the remaining two thirds of the total income deriving from the rent of my lands to the Kilauea Sugar Co. or equivalent thereof.

Second. I further direct that the 100 acres reserved by me according to agreement with the Kilauea Sugar Co. and actually fenced in, forming at present my homestead, shall be divided into 10 lots and shall be distributed in the following manner:

1° To my wife Susan C. Bertelmann lot No. 1, described hereafter as figure ABCba (line AB 1400 ft. BC 850 ft. Cb 690 ft. aA 22 ft. on gov. road.); including all buildings, improvements and [17] appartenances thereupon along with all chattels and furnitures except those furnitures; already disposed off by any previous arrangements in favor of any of my children. Said Susan C. Bertelmann to have, to hold and to dispose of said premises and appartenances thereupon for her own private and personal use, with the expressed condition that she shall not sell, convey nor dispose of the whole nor any part of the same in favor of any one outside of my own family. It is also my sincere wish and desire not my will; that in case *of* my wife should like to dispose of these premises; whether during her life time or by special will after her death, she would give the preference to my eldest son Franz Charles Bertel-

mann, provided she would have no special reason, to give or to convey the same or any part of it, in favor of any one of my other children.

2° To my son Franz Charles Bertelmann I give, devise and bequeath that parcel of land along side of his mother's, described hereafter as lot No. 2. (figure abcd-bc 135 fT, mauga.-ad 223 ft. al. gov. road.)

3° To my son Henry Godfrey Bertelmann; I give, devise and bequeath that piece of land along side lot No. 2, and described as lot No. 3 hereafter (by figure d c f e-cf 135 ft. mauka-dc 223 ft. al. gov. road.)

4° To my daughter Catherine Haunani Bertelmann: I give, devise and bequeath that parcel of land along side No. 3 and described hereafter as lot No. 4 (by figure e f g h.-fg 135 ft. mauka-eh 223 ft. al. gov. road)

5° To Justine Ludovica Dorothea Maihui Bertelmann my daughter: I give, devise and bequeath that parcel of land along side No. 4 and described hereafter as lot No. 5 (by figure hgji-line gj 135 ft. mauka-hi 223 ft. al. gov. road)

6° To Mary Angeline Kanikela Bertelmann my daughter: I give, devise and bequeath that parcel of land along side No. 5 and described hereafter as lot No. 6 (by figure ijkl-line jk 135 ft. mauka il 223 ft. al. gov. road) [18]

7° To my daughter: Mary Wilhelmina Bertelmann: I give, devise and bequeath that parcel of land along side No. 6 and hereafter described as lot No. 7 (by figure lklnm-line kn 135 ft. mauka lm 223 ft. al. gov. road)

8° To my daughter: Mary Josephine Hattie Ke' hukalani Bertelmann: I give, devise and bequeath that parcel of land along side No. 7 and described hereafter as lot No. 8 (by figure mnog-line no 135 ft. mauka-mg 223 ft. al. gov. road.

9° To my daughter: Beatrice Bertelmann I give devise and bequeath that parcell of land along side No. 8 and hereafter described as lot No. 9 (by figure gopr.-line op 135 ft. mauka-gr 223 ft. alo. gov. road)

10° To my son: Christian Sylvester Bertelmann, I give, devise and bequeath that parcell of land along side lot No. 9 and described hereafter as lot No. 10 by figure pDEr-line pD 136 ft. mauka-rE 226 ft. al. gov. road.

I hereby also direct that not one of these above mentioned lots, shall ever be conveyed, sold or in any other way disposed off outside of my own family as long as there will be one or more legal offsprings of C. Bertelmann's family.

Third. At the expiration of the 25 years lease with the Kilauea Sugar Co. it is my sincere wish and will that my lands shall befall in equal shares and interest upon my three sons Frank Charles, Henry Godfrey and Christian Sylvester Bertelmann, or then surviving sons or son. Provided however that at such a time these my sons or son shall pay to each one of my daughters or surviving daughters the sum of five thousand dollars \$5000.00 In case one or two of my sons should be at that time, or within a year from that time unable to furnish, produce or raise the necessary amount to pay to each one of my daughters or surviving daughters his share of the

\$5000.00 per capita, the two or the one of my sons will have a right to buy the whole of my lands now leased to the K. S. Co. by paying: [19]

1° to each of my daughters or surviving daughters the amount aforesaid of \$5000.00

2° to my shortcoming son or sons the same amount of \$500.00 each, being the same share as will be paid to my daughters. By doing so, they my sons or he my son will enter in full possession of all my lands; and their or his right and title will be undisputable, provided they or he (my sons or son) comply and fulfill the above mentioned conditions.

3° To my wife Susan Bertelmann a life rent of \$2000.00 per annum. I make the payment of all these amounts above given a charge upon all my estate.

Fourth. Should none of my sons be able to pay these amounts, then my lands will be sold at public auction, or leased over again according to circumstances and best advantage of my family. The money deriving from said sale or lease will be equally divided amongst my children or their lawful heirs and assigns after the distributive share of dower will have been given to my wife Susan Bertelmann according to law.

Fifth. I nominate and appoint my friends Rev. Sylvester of Honolulu and Albert S. Wilcox of Kauai to be executors of this my will, for the purpose of paying my debts if any they to act without bond.

Sixth. It is further my wish and will that Rev. Sylvester of Honolulu shall be appointed guardian of

my minor children and receive directly all income belonging to the Estate by him to be distributed according to my will, to all and every member of my family, giving each one his share quarterly.

Seventh. All horses and cattle branded C. B. or S. B. lawfully belonging to me shall be remitted to my wife Susan C. Bertelmann. I hereby also grant, bequeath and devise to my wife, that Kuleana of two acres of taro land situated at Kahili, Kauai and specially reserved by me as per agreement in the lease with Kilauea Sugar [20] Co. for her to hold, to possess and to dispose off according to her own wish and will.

In witness whereof I said Christian H. Bertelmann have hereunto set my hand and seal this twelfth (12th) day of December A. D. Eighteen Hundred ninety one.

(Signed)

CHRISTIAN H. BERTELMANN. [Seal]

Signed, sealed, published and declared by the said Christian H. Bertelmann as and for his last will and testament in our presence, who at his request, in his presence and in the presence of each other and in the same room have hereunto set our names as Witness thereto:

(Signed) CHAS. KOELLING,

“ EMMERAN SCHULTE.

Know all men by these presents that I Susan Bertelmann in consideration of one Dollars to me paid, the receipt whereof is hereby acknowledged, do hereby promise, covenant and agree to and with

my husband Christian H. Bertelmann that I will accept the provisions made for me in the above will in heir of Dower and my distributive share given to me by law in the Estate of my husband.

Witness my hand and seal this twelfth (12th) day of December, A. D. 1891.

(Signed)

SUSAN BERTELMANN. [Seal]

In presence of:

(Signed) CHAS. KOELLING,

“ EMMERAN SCHULTE. [21]

**Exhibit “C” to Agreed Statement of Facts—Deed,
March 5, 1910, Bertelmann to Lucas.**

Know all men by these presents, that I Henry Godfrey Bertelmann, of Honolulu, Island of Oahu, Territory of Hawaii, in consideration of Fifteen Thousand Dollars, (\$15,000.00) to me paid by Mary N. Lucas, wife of Charles Lucas, of said Honolulu, the receipt whereof is hereby acknowledged, hereby give, grant, bargain, sell and convey all of my right, title, interest and estate, claim and demand, vested or contingent, present or prospective, in law or in equity, in and to the following tracts and parcels of land situate on the Island of Kauai, Territory of Hawaii, viz.:—

1st:—The Ahupuaa of Kahili, containing an area of 1,789 acres more or less, being the same premises described in Royal Patent —, Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Bertelmann by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in

the Hawaiian Registry of Deeds in Liber 86, folio 220.

2nd:—The Ahupuaa of West Waiakalua, containing an area of 332-40/100 acres more or less, being premises also conveyed to said Christian Bertelmann by said deed.

3rd:—The Ahupuaa of Pilaa, containing an area of 1,520 acres more or less, being the same premises described in Land Commission Award 8559 B to W. C. Lunalilo, and conveyed to said Christian Bertelmann by deed of J. Mott Smith et al., dated February 5th, 1878, of record in the Hawaiian Registry of Deeds in Liber 53, folio 284.

4th:—All that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres more or less, being the same premises conveyed to said Christian Bertelmann by deed of Wm. Wörner, dated March 31st, 1883, of record in the Hawaiian Registry of Deeds in Liber 79, folios 386–387.
[22]

5th:—Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

6th:—All kuleanas situated within or adjacent to the boundaries of any of the above described premises, and all other parcels and tracts of land upon the Island of Kauai heretofore owned by Christian Bertelmann.

7th:—All streams of water and water rights upon or appurtenant to all and singular the above mentioned premises.

8th:—All leases of any portion of said premises made by the said Christian Bertelmann together with all rents, remainders and reversions of the same.

And being the same premises leased by Christian Bertelmann to the Kilauea Sugar Company, a corporation, by lease dated November 1, A. D. 1890, and devised and bequeathed to me by will of said Christian Bertelmann, dated December 12, 1891, and now on file in the Clerk's Office of the Supreme Court of the Territory of Hawaii.

9th:—All that piece or parcel of land situate at Pilaa, Island of Kauai, Territory of Hawaii, devised to me by the will of Christian Henry Bertelmann, dated the 12th day of December, 1891, and now on file in the Clerk's Office of the Supreme Court of the Territory of Hawaii, and known as Lot Number Ten (10) of the map attached to said will.

To have and to hold all said right, title, interest and estate, claim and demand in said premises with all the rights, privileges and appurtenances thereto belonging to the said Mary N. Lucas and her heirs and assigns forever.

And I hereby for myself and my heirs, executors and administrators, covenant with the said Mary N. Lucas and her heirs and assigns, that I am lawfully seized in fee simple of the granted premises; that they are free from all incumbrances, [23] save and except that certain lease to the Kilauea Sugar Company made by Christian Bertelmann, dated November 1, 1890, at an annual rental of Six Thousand Dollars (\$6,000.00); that I will and my heirs, executors and administrators shall warrant and defend the

same to the said Mary N. Lucas, and her heirs and assigns forever against the lawful claims and demands of all persons save under said lease.

And for the consideration aforesaid, I do hereby assign and set over unto the said Mary N. Lucas, and her heirs and assigns forever, all my right, title, interest, share and proportion of, in and to any and all rents due or to become due under the aforesaid lease to said Kilauea Sugar Company, or any other and all leases of said premises or any portion thereof.

And for the consideration aforesaid, I do hereby sell, assign and transfer to said Mary N. Lucas, her heirs and assigns forever, all and every the rights, powers and privileges given and granted to me by the will of my said father, Christian Henry Bertelmann, and particularly by paragraph "Third" thereof.

And for the consideration aforesaid, I, Maggie Bertelmann, wife of the said Henry Godfrey Bertelmann, do hereby release and quit-claim unto the said Mary N. Lucas, and her heirs and assigns forever, all my dower and right of dower, in and to all of the premises and property herein described.

In Witness Whereof, the said Henry Godfrey Bertelmann, and Maggie Bertelmann, have hereunto set their hands and seals this 5th day of March, A. D. 1910.

(Sgd.) HENRY GODFREY BERTELMANN.

" MAGGIE BERTELMANN.

Executed in presence of:

(Sgd.) C. W. ASHFORD.

City and County of Honolulu,
Territory of Hawaii,—ss.

On this fifth day of March A. D. 1910, before me personally appeared Henry Godfrey Bertelmann and Maggie Bertelmann, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

(Signed) R. R. REIDFORD,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [25]

[Endorsed]: (Copy.) Deed. Dated March 5, 1910. Henry Godfrey Bertelmann to Mary N. Lucas. Recorded in Book 332, pp. 16-18, March 7, 1910, at 12:05 o'clock P. M. and compared. (S) Charles H. Merriam, Registrar of Conveyances. [26]

**Exhibit "D" to Agreed Statement of Facts—Deed,
September 12, 1907, Bertelmann to Lucas.**

12 Documentary stamps of the Territory of Hawaii
@ \$5.00—\$60.00.

KNOW ALL MEN BY THESE PRESENTS:
That I, CHRISTIAN SYLVESTER BERTELMANN, of Honolulu, Island of Oahu, Territory of Hawaii, in consideration of Fifteen Thousand Dollars (\$15,000.00) to me paid by MARY N. LUCAS, wife of Charles Lucas, of said Honolulu, the receipt whereof is hereby acknowledged, hereby give, grant, bargain, sell and convey all of my right, title, interest and estate, claim and demand, vested or contingent, present or prospective, in law or in equity, in and to

the following tracts and parcels of land situate on the Island of Kauai, Territory of Hawaii, viz:—

1st: The Ahupuaa of Kahili containing an area of 1,789 acres more or less, being the same premises described in Royal Patent —, Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Bertelmann by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86, folio 220.

2nd: The Abupuaa of West Waiakalua, containing an area of 332-40/100 acres more or less, being premises also conveyed to said Christian Bertelmann by said deed.

3rd: The Ahupuaa of Pilaa containing an area of 1,520 acres more or less, being the same premises described in Land Commission Award 8559B to W. C. Lunalilo, and conveyed to said Christian Bertelmann by deed of J. Mott Smith et al., Trustees, dated February 5th, 1878, of record in the Hawaiian Registry of Deeds in Libr 53, folio 284.

4th: All that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres more or less, being the same premises conveyed to said Christian Bertelmann [27] by deed of Wm. Worner, dated March 31st, 1883, of record in the Hawaiian Registry of Deeds in Libr, 79, folios 386-387.

5th: Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

6th: All kuleanas situated within or adjacent to the boundaries of any of the above described premises, and all other parcels and tracts of land upon the Island of Kauai heretofore owned by Christian Bertelmann.

7th: All streams of water and water rights upon or appurtenances to all and singular the above mentioned premises.

8th: All leases of any portion of said premises made by the said Christian Bertelmann together with all rents, remainders and reversions of the same.

And being the same premises leased by Christian Bertelmann to the Kilauea Sugar Company, a Corporation, by lease dated November 1, A. D. 1890, and devised and bequeathed to me by will of said Christian Bertelmann, dated December 12, 1891, and now on file in the Clerk's office of the Supreme Court of the Territory of Hawaii.

9th: All that piece or parcel of land situate at Pilaa, Island of Kauai, Territory of Hawaii, devised to me by the will of Christian Henry Bertelmann, dated the 12th day of December, 1891, and now on file in the Clerk's office of the Supreme Court of the Territory of Hawaii, and known as Lot Number Ten (10) of the map attached to said will.

TO HAVE AND TO HOLD all said right, title, interest and estate, claim and demand in said premises with all the rights, privileges and appurtenances thereto belonging to the said MARY N. LUCAS, and her heirs and assigns forever.

AND I hereby for myself and my heirs, executors and administrators covenant with the said MARY

N. LUCAS and her [28] heirs and assigns, that I am lawfully seized in fee simply of the granted premises; that they are free from all incumbrances, save and except that certain lease to the Kilauea Sugar Company made by Christian Bertelmann, dated November 1, 1890, at an annual rental of Six Thousand Dollars (\$6,000.00); that I will, and my heirs, executors and administrators shall warrant and defend the same to the said MARY N. LUCAS and her heirs and assigns forever against the lawful claims and demands of all persons save under said lease.

AND for the consideration aforesaid, I do hereby transfer assign and set over unto the said MARY N. LUCAS and her heirs and assigns forever, all my right, title, interest, share and proportion of, in and to any and all rents due or to become due under the aforesaid lease to said Kilauea Sugar Company, or any other and all leases of said premises or any portion thereof.

AND for the consideration aforesaid, I do hereby sell, assign and transfer to said MARY N. LUCAS, and her heirs and assigns forever, all and every the rights, powers and privileges given and granted to me by the will of my said father, Christian Henry Bertelmann, and particularly by paragraph "Third" thereof.

IN WITNESS WHEREOF, I, the said CHRISTIAN SYLVESTER BERTELMANN, hereunto set

my hand and seal this 12th day of SEPTEMBER,
A. D. 1907.

(Signed) CHRISTIAN SYLVESTER
BERTELMANN.

Executed in presence of:

WILLIAM SAVIDGE.

Territory of Hawaii,
County of Oahu,
City of Honolulu,—ss.

On this Thirteenth day of September, A. D. 1907,
personally appeared before me Christian Sylvester
Bertelmann, known to me to be the person described
in and who executed the foregoing instrument, who
acknowledged to me that he executed the same freely
and voluntarily and for the uses and purposes there-
in set forth.

[Notarial Seal] (Sgd.) WILLIAM SAVIDGE,
Notary Public, First Judicial Circuit, Territory
of Hawaii. [29]

[Endorsed]: W. S. 2944—11:55. Deed. Christian
Sylvester Bertelmann to Mary N. Lucas. Dated:
September 12th, 1907. Indexed: Register Office
Oahu—ss: Received for record this 14th day of Sep-
tember A. D. 1907 at 11:55 o'clock A. M. and recorded
in Liber 292 on pages 498-500 and Compared. (S)
Chas. H. Merriam, Registrar of Conveyances. By
....., Deputy Registrar.

Recording Fees \$5.

60 [30]

X

Exhibit "E" to Agreed Statement of Facts—Mortgage, August 3, 1900, Bertelmann to Magoon, etc.

U. S. Revenue Stamp of 1900—25¢.

3 Territorial Stamps \$1.00—\$3.00.

THIS INDENTURE made this 3d day of August A. D. 1900, between FRANZ CHARLES BERTELMANN of Pilaa, Kauai, of the first part MORTGAGOR and J. ALFRED MAGOON of Honolulu, Island of Oahu, Territory of Hawaii, of the second part MORTGAGEE, WITNESSETH:

THAT the said party of the first part in consideration of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1500.00) to him paid by said party of the second part, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto said party of second part ALL the lands and premises belonging to him the said party of the first part situate in said Island of Kauai, including all the right, title and interest of the said party of the first part and all the lands, premises, tenements, hereditaments and rights devised to him by his father's will duly admitted to probate on the 18th day of April 1895 and appearing on record of Probate under Number 423 on the Records of Probate on the Island of Kauai.

To have and to hold the same with all the rights, privileges, issues, rents, profits, appurtenances and easements unto said J. Alfred Magoon, his heirs and assigns to his and their use and behoof forever.

This conveyance being intended as a mortgage to

secure the repayment of said sum of ONE THOUSAND FIVE HUNDRED Dollars (\$1500.00) in SIX Years from date with interest at the rate of TEN per cent per annum net above all taxes and all other charges payable semiannually according to the promissory note of the said Mortgagor, whereby he promises to pay said principal and interest with same aforesaid.

And it is agreed that the said Mortgagee is *sole* authorized [31] and empowered to take, collect and receive all the share of the Mortgagor of the rents due or that may accrue due under that certain indenture of lease from C. Bertelmann to the Kilauea Sugar Company dated November 1st 1890, and after deducting all costs and charges with reference to the same he shall apply the net proceed to the payment first to the said interest and second to the said payment of said principal and it is agreed that said mortgagor shall have the right of paying all the said principal at any due date of interest and shall be entitled to a cancellation hereof and it is hereby further agreed that said FRANZ CHARLES BERTELMANN will insure his life in some life insurance company to be designated by the Mortgagor for a sum not less than \$2000.00 and will not do any act or thing to forfeit said insurance and will keep the premiums at all times paid and will assign said policy to said Mortgagee as security for the payment of the said principal and interest.

BUT in case said Mortgagor shall suffer a breach of the foregoing condition or any agreement herein contained, said Mortgagor's debt and note shall be-

come immediately due and payable and upon such breach or default said Mortgagee, his executors, administrators and assigns are hereby irrevocably authorized and empowered to foreclose this mortgage and may thereupon sell said premises and property at public auction in Honolulu without suit and decree of sale with all improvements and may make and execute all proper deeds therefor and may become purchasers at such sale, and such sale shall forever bar the said Mortgagor and all persons claiming under him from all right in said property and out of the proceeds may retain a counsel fee and all costs of sale and all sums then secured hereby, whether then or thereafter payable.

IN and for the aforesaid consideration, I MARY BERTELMANN, wife of said FRANZ CHARLES BERTELMANN do hereby release and quitclaim unto said Mortgagee and his heirs and assigns forever [32] all my dower and right of dower in said premises and property.

IN WITNESS WHEREOF, the said FRANZ CHARLES BERTELMANN and MARY BERTELMANN have hereunto set their hands and seals the day and year first above written.

(Signed) FRANK C. BERTELMANN.

“ MARY BERTELMANN.

IN PRESENCE OF:

.....

Territory of Hawaii,
Island of Oahu,—ss.

On this 3d day of August, A. D. 1900, personally appeared before me FRANK C. BERTELMANN

and MARY BERTELMANN, his wife, known to be *to be* the persons described in and who executed the foregoing instrument and they acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein set forth. And said MARY BERTELMANN, on an examination separate and apart from her husband acknowledged to me that she executed the same freely, without fear or compulsion of her said husband.

[Notarial Seal]

(Signed) ALEX. ST. M. MACKINTOSH,
Notary Public, First Jud. Circuit. [33]

Territorial Stamp—\$1.00.

In consideration of \$1997.45, to me, the within named mortgagee, paid by Mary Lucas, wife of Charles Lucas, of Honolulu, Island of Oahu, Territory of Hawaii, being the *dull* amount due to me of principal and interest and charges on the within mortgage, the receipt whereof is hereby acknowledged, I do hereby sell, assign, transfer and set over unto said Mary Lucas all my right, title and interest in and to the said mortgage, and all my right, title and interest thereunder to the property therein described, and the note and claim thereby secured.

Dated Honolulu, July 11th, 1902.

(Signed) J. ALFRED MAGOON.

Territory of Hawaii,
Island of Oahu,—ss.

On this twenty-eighth day of July, A. D. 1902, personally appeared before me J. Alfred Magoon, known to me to be the person described in and who executed the foregoing instrument, who duly ac-

knowledge to me that he executed the same freely and voluntarily and for the uses and purposes therein set forth.

[Notarial Seal]

(Signed) P. DANSON KELLETT, Jr.,
Notary Public, First Judicial Circuit. [34]

[Endorsed]: C. Lucas 5042-12:20. Indexed. Register Office Oahu,—ss. Received for record this 28th day of July, A. D. 1902 at 12:20 o'clock P. M. and Recorded in Liber 213 on Page 223. And Compared. (S) Thos. G. Thrum, Registrar of Conveyances. By ———, Deputy Registrar.

Recording Fees \$1-Pd.

Pd. 1.-1. 2.

J. A. M. 6036-1:52. Mortgage. Franz Charles Bertelmann to J. Alfred Magoon. Dated: August 3d, 1900. Assigned to Mary N. Lucas, July 11, 1902. Indexed. Register Office Oahu,—ss. Received for Record this 25th day of September A. D. 1900 at 1:52 O'clock P. M. and Recorded in Liber 213 on Pages 222, 223 and 224. And Compared. (S) Thos. G. Thrum, Registrar of Conveyances. By ———, Deputy Registrar.

Recording Fees, \$4.50.

3 x

**Exhibit "F" to Agreed Statement of Facts—
Mortgage, January 23, 1901, Bertelmann to
Kobayashi.**

Territorial Stamp—\$1.00.

Know all men by these presents that I, Frank C. Bertelmann, of Honolulu, Oahu, Mortgagor, in con-

sideration of the sum of Three Hundred and Twenty-five Dollars to me paid by S. Kobyashi, of said Honolulu, Mortgagee, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto said Mortgagee and his heirs and assigns forever, all of my one-third undivided interest in and to all of those certain parcels of land situate on the Island of Kauai, viz:

1. The Ahupuaa of Kahili, described in R. P. — L. C. A. 8559B to W. C. Lunalilo, containing an area of 1789 acres.

2. The Ahupuaa of West Waiakalua containing an area of 322.40 acres.

3. The Ahupuaa of Pilaa, described in L. C. A. 8559B to W. C. Lunalilo containing an area of 1520 acres (excepting however therefrom 100 acres reserved for a homestead).

4. Land at Lepeula, Koolau, Kauai, containing 102 acres, being the same conveyed to C. Bertelmann by deed dated March 31, 1883, recorded in Liber 79, page 386.

5. Five shares in the Hui of Moloaa.

And also all of my right, title and interest in and to all rents now or hereafter to become due for any portions of the lands above described.

And I do hereby for myself and my heirs executors and administrators covenant with said Mortgagee and his heirs and assigns that I am lawfully seized in fee simple of said granted premises; that the same are free of all incumbrances; that I will and my heirs, executors and administrators shall warrant and defend the same unto said Mortgagee and his

heirs and assigns forever against the lawful claims and demands of all persons; that I will pay to said Mortgagee or order the [35], sum of \$325.00 in One Month from date with interest thereon from date until paid at the rate of Nine per cent per annum, payable monthly, and will pay all taxes and Government charges on the property above granted and also the expense of release of this mortgage.

In case I shall pay said note and interest at the times aforesaid and shall perform all of the covenants and agreements herein then this deed and said note shall be void.

In case I shall fail to pay said note and interest at the times aforesaid or in case of a breach of any of the covenants or conditions herein, the said Mortgagee, his heirs or assigns may foreclose this mortgage and sell said granted premises or any part thereof as provided by law and may convey the property so sold to the purchaser thereof in fee simple, either in his or their own name or names or as my attorney in fact for that purpose hereby irrevocably constituted and appointed and out of the proceeds of sale shall retain all sums hereby secured including expense of foreclosure and sale and an attorney's fee, rendering the surplus to me or my heirs or assigns.

And for the consideration aforesaid I, Mary Bertelman, wife of said Mortgagor, hereby release unto said Mortgagee and his heirs and assigns forever all of my right of dower in and to said granted premises.

Witness our hands and seals this 23d day of January, 1901.

(Signed) F. C. BERTELMANN.

“ MARY BERTELMANN. [36]

Territory of Hawaii,
Island of Oahu,—ss.

On this 23d day of January, A. D. 1901, personally appeared before me Frank C. Bertelmann and Mary Bertelmann, his wife, known to me to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein set forth. And said Mary Bertelmann, on a private examination by me, separate and apart from her husband, further acknowledged to me that she executed the same freely and **without any fear, compulsion or constraint** from her said husband.

[Notarial Seal] (Sgd.) R. C. A. PETERSON,
Notary Public.

Territorial Stamp—\$1.00.

**Exhibit "G" to Agreed Statement of Facts—
Assignment of Mortgage, August 18, 1902,
Kobayashi to Peterson.**

In consideration One Dollar to me paid by D. L. Peterson, of Honolulu, Oahu, I hereby assign, transfer and set over to D. L. Peterson and his heirs, representatives and assigns forever the within mortgage, the note and debt thereby secured, and all of my right, title and interest in and to the premises and property therein mentioned.

Dated Honolulu, August 18, 1902.

(Signed) S. KOBAYASHI.

Territory of Hawaii,
Island of Oahu,—ss.

On this 18th day of August, A. D. 1902, personally appeared before me S. Kobayashi, known to me to be the person described in and who executed the foregoing assignment of mortgage, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein set forth.

[Notarial Seal]

(Signed) CHARLES F. PETERSON,
Notary Public.

[Endorsed]: C. F. Peterson. 7573-1:46. Mortgage. Frank C. Bertelmann & Wife to S. Kobayashi. Dated January 23, 1901. \$325. One Month, 9%. Indexed. Register Office Oahu,—ss. Received for Record this 24th day of January, A. D. 1901, at 1:46 o'clock P. M., and recorded in Liber 215 on pages 456-458. And Compared. (S) Thos. G. Thrum. Registrar of Conveyances. By ———, Deputy Registrar.

Recording Fees \$4.

1

X [37]

**Exhibit "H" to Agreed Statement of Facts—
Assignment of Mortgage, August 28, 1902,
Peterson to Lucas.**

Territorial Stamp—\$1.00.

In consideration of the payment to me of the full sum secured by the within mortgage I do hereby as-

sign, transfer and set over to Mrs. Mary Lucas of Honolulu, Oahu, and her representatives and assigns forever the within mortgage, the note and debt thereby secured and all of my right, title and interest in the property therein described by reason of said mortgage.

Dated Honolulu, August 28, 1902.

(Signed) DAVID L. PETERSON.

Territory of Hawaii,
Island of Oahu,—ss.

On this 3d day of September, A. D. 1902, personally appeared before me, David L. Peterson, known to me to be the party described in and who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein set forth.

[Notarial Seal] (Sgd.) R. C. A. PETERSON,
Notary Public. [38]

[Endorsed]: C. H. Merriam. 5804 & 5805—11:25. Mortgage. Frank C. Bertelmann to S. Kobayashi. Assigned to Mary N. Lucas, August 28, 1902. Indexed. Register Office Oahu,—ss. Received for Record this 29th day of September, A. D. 1902, at 11:25 o'clock A. M. and Recorded in Liber 215 on Pages 457. And Compared. (S) Thos. G. Thrum, Registrar of Conveyances. By ————— Deputy Registrar.

Recording Fees \$2

2. [39]

**Exhibit "I" to Agreed Statement of Facts—
Mortgage, August 13, 1902, Bertelmann to Lucas.**

Documentary stamp of the Republic of Hawaii—
\$10.00.

Documentary stamp of the Republic of Hawaii—
\$5.00.

4 Territorial stamps at \$1.00—4.00.

KNOW ALL MEN BY THESE PRESENTS that I, FRANK CHARLES BERTELMANN, of Honolulu, Island of Oahu, Territory of Hawaii, Mortgagor, in consideration of NINE THOUSAND EIGHT HUNDRED AND FORTY-FIVE DOLLARS (\$9845.) to me paid by MARY LUCAS, wife of C. Lucas, of said Honolulu, Mortgagee, the receipt whereof is hereby acknowledged, hereby give, grant, bargain, sell and convey unto the said Mary Lucas all of my right, title and interest in and to the following described land situate in the Island of Kauai, Territory of Hawaii, particularly described as follows:

1st: The Ahupuaa of Kahili, containing an area of 1789 acres more or less, being the same premises described in Royal Patent Land Commission Award 8559B. to W. C. Lunalilo and conveyed to Christian Bertelmann by deed of A. S. Hartwell et al., Trustees, dated September 24th, 1883, of record in the Hawaiian Registry of Deeds in Liber 86, folios 220.

2d: The Ahupuaa of West Waiakalua, containing an area of 332 40/100 acres more or less, being premises also conveyed to said Christian Bertelmann by said deed.

3d: The Ahupuaa of Pilaa containing an area of 1520 acres more or less, being the same premises described in Land Commission Award 8559 B. to W. C. Lunalilo, and conveyed to Christian Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5th, 1878, of record in the Hawaiian Registry of Deeds in Liber 53, folio 284.

4th: All that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres more or less, being the same premises conveyed to said Christian Bertelmann by deed of William Worner, dated March 31st, 1883, of record in the Hawaiian Registry of Deeds in Liber 79, folios 386-387. [40].

5th: Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

Also, all kuleanas now belonging to me situated within or adjacent to the boundaries of any of the above demised premises, and all other parcels and tracts of land upon the Island of Kauai belonging to me.

TO HAVE AND TO HOLD the granted premises, with all the rights, privileges and appurtenances thereto belonging to the said Mary Lucas, and her heirs and assigns, forever.

And I hereby for myself and my heirs, executors and administrators, covenant with the Mortgagee and her heirs and assigns that I am lawfully seized in fee simple of the granted premises; that they are free from all incumbrances except that certain indenture

of lease made by Christian Bertelmann to the Kilauea Sugar Company dated November 1st, 1890, leasing all of the aforesaid lands for the term of twenty-five years from said November 1st, 1890; that I will, and my heirs, executors and administrators shall, warrant and defend the same to the Mortgagee and her heirs and assigns forever against the lawful claims and demands of all persons.

And for the consideration aforesaid the said Mortgagor does hereby transfer, assign and set over unto the Mortgagee all the share of the Mortgagor in and to the rents due or which may hereafter become due under that certain indenture of lease from Christian Bertelmann to the Kilauea Sugar Company, dated November 1st, 1890, and the Mortgagor does hereby constitute and appoint the Mortgagee his attorney irrevocable with full power and authority to collect and [41] receive any and all of the said rents as aforesaid and to apply the same as follows:

First: To the payment of the interest due hereunder;

Second: To the payment of all taxes and assessments against said property;

Third: Any surplus to be applied annually to the payment on account of the principal sum of this mortgage.

And for the consideration aforesaid I, Mary Bertelmann, wife of the said Frank Charles Bertelmann, hereby release unto the Mortgagee and her heirs and assigns, all my right of dower in the granted premises.

PROVIDED NEVERTHELESS that if I, or my heirs, executors, administrators or assigns, shall pay

unto the mortgagee or her assigns the sum of Nine Thousand eight hundred forty-five (\$9845) dollars in three (3) years from the date hereof with interest semi-annually at the rate of ten (10%) per cent per annum, and until such payment shall pay all taxes and assessments to whomsoever laid or assessed, whether on the granted premises or any interest therein, or on the debt secured hereby; also all assessments for permanent benefit or improvement of said premises, or any part thereof, under any betterment law or otherwise, or other charges which may be legally imposed upon the property, or to which the said property or any part thereof is now or may during said term become liable; and shall comply with all rules and regulations made by the Board of Health or other authority of the Government; and shall not commit or suffer any strip or waste of the granted premises, or any breach of any covenant herein contained, and shall not suffer or do any act or negligence whereby the granted premises or any part thereof shall become liable to seizure or attachment or mesne or final process of [42] law in bankruptcy or otherwise, or whereby the security of these presents shall become lessened or impaired—then this deed, as also my note of even date herewith, signed by me, whereby I promise to pay the Mortgagee or order the said sum and interest at the times aforesaid shall be void.

BUT UPON ANY DEFAULT in the performance or observance of any of the foregoing conditions the Mortgagee, her executors, administrators or assigns, may foreclose this mortgage by bill in equity or other-

wise; may enter and take possession of said premises, or with or without entry, sell the granted premises at public auction in said Honolulu, or on the Island of Kauai, as a whole or in lots or parcels, together with all improvements that may be thereon, first publishing a notice of the time and times, and place and places of such sale or sales according to law, and may convey the premises so sold by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale or sales shall forever bar me, and all persons claiming under me, from all right and interest in the said premises, whether at law or in equity.

AND out of the money arising from such sale or sales the Mortgagee, or her representatives, shall be entitled to retain all sums then secured by this deed whether then or thereafter payable, including all costs, charges and expenses incurred or sustained by them by reason of any default in the performance or observance of the covenants and conditions of this mortgage, and an attorney's fee, and also all advances and expenditures made necessary by any default of the Mortgagor in the performance or observance of any covenants and conditions, and in order to protect said security and save [43] said property from loss or injury, rendering the surplus, if any, to me or my heirs or assigns.

AND IT IS AGREED that the Mortgagee, her executors, administrators or assigns, or any person or persons in her or their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the

purchase money; and that until default in the performance or observance of the condition of this deed I and my heirs and assigns may hold and enjoy the granted premises.

.....

IN WITNESS WHEREOF we, the said Frank Charles Bertelmann and Mary Bertelmann, hereunto set our hands and seals this 13th day of August, A. D. 1902.

(Signed) FRANK CHARLES BERTELMANN,
MARY BERTELMANN.

Executed in the presence of

.....

Territory of Hawaii,
Island of Oahu,—ss.

On this 13th day of August, A. D. 1902, personally appeared before me, Frank Charles Bertelmann, and Mary Bertelmann his wife, known to me to be persons described in and who executed the foregoing instrument who acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein set forth. And the said Mary Bertelmann on an examination separate and apart from her husband further acknowledged that she executed the same without compulsion, fear or constraint from her said husband.

[Notarial Seal] (Signed) WM. B. FORBES,

Notary Public, First Judicial Circuit. [44]

[Endorsed]: 5385—1:20. Mortgage. Frank Charles Bertelmann, to Mary Lucas. Indexed. Register Office Oahu,—ss: Received for Record this 25th day of August, A. D. 1902, at 1:20 O'clock P. M.

and Recorded in Liber 236 on Pages 372-375. And Compared. (S) Thos. G. Thrum. Registrar of Conveyances. By Deputy Registrar. Recording fees, \$7.50.

19 [45]

**Exhibit "J" to Agreed Statement of Facts—
Supreme Court Execution, December 16, 1902,
in Washington Mercantile Co. v. Bertelmann.**

In the Supreme Court of the Territory of Hawaii.

WASHINGTON MERCANTILE COMPANY,
LIMITED,

Plaintiff,

vs.

F. C. BERTELMANN,

Defendant.

The Territory of Hawaii.

To the High Sheriff of the Territory of Hawaii, or his Deputy; the Sheriff of the Island of Kauai, or his Deputy, or any Constable in the Territory of Hawaii:

YOU ARE COMMANDED to levy upon the personal property of F. C. BERTELMANN, defendant in the above-entitled action, and, if sufficient cannot be found, then upon his real property, within the Territory; and, having given the notice required by law, to sell at public sale to the highest bidder enough thereof to satisfy the amount of the judgment, with interest and costs, entered in said action, on the 3d day of November, A. D., 1902, in favor of Washington Mercantile Company, Limited, as follows, viz:

Damages.....	69.11
Interest.....	
Attorney's Fees and Commissions.....	6.91
Costs of Court.....	4.10

Judgment entered for.....	80.12
Interest from entry of judgment to date.....	.40
Issuing Execution.....	5.00
Costs of Execution & bond in Lower Court (re- turned unsatisfied).....	2.00

Total—EIGHTY-SEVEN AND 52/100

DOLLARS87.52

Collect also legal interest thereon from date hereof, with your costs and expenses, and make return of this Writ within sixty days, with the proceeds by you collected. Hereof fail not at your peril.

WITNESS the Honorable WALTER F. FREAR, Chief Justice of said Supreme Court, at Honolulu, this 16th day of December, 1902.

(Signed) J. A. THOMPSON,
Clerk Supreme Court.

[Endorsed]: L. 5473—20/362. Supreme Court, Territory of Hawaii. Washington Mercantile Company, Limited, vs. F. C. Bertelman. Execution. Issued December 16, 19—2, at 12 o'clock M. (Sgd.) J. A. Thompson, Clerk. Returned February 17, 1903, at 2:10 o'clock P. M. (Sgd.) J. A. Thompson, Clerk. [46]

**Exhibit "K" to Agreed Statement of Facts—
Deed, February 7, 1903, High Sheriff of
Territory of Hawaii to Lucas.**

Stamps Ter. \$1.00.

KNOW ALL MEN BY THESE PRESENTS, that I, ARTHUR M. BROWN, High Sheriff of the Territory of Hawaii, on this 7th day of February, A. D. 1903, in pursuance of a Writ of Execution to me issued on the 16th day of December, A. D. 1902, out of the Supreme Court of the Territory of Hawaii, for the sum of Eighty-seven Dollars and Fifty-two Cents (\$87.52), on a judgment rendered by the said Supreme Court in a certain cause wherein the WASHINGTON MERCANTILE COMPANY, LIMITED, a Corporation duly established and existing under the laws of the Territory of Hawaii, were Plaintiffs, and F. C. BERTELMAN was Defendant, the said Writ commanding the High Sheriff of the Territory of Hawaii to levy upon the personal property of the said F. C. BERTELMAN, Defendant in the above-entitled action, and, if sufficient cannot be found, then upon his real property, within the Territory; and, having given the notice required by law, to sell at Public Sale to the highest bidder enough thereof to satisfy the amount of the said judgment, with interest and costs, entered in said action, on the 3d day of November, A. D. 1902, together with legal interest thereon from the said 16th day of December, A. D. 1902, and my costs and expenses; I have, therefore, levied upon the property of the said F. C. BERTELMAN, Defendant in said action, and did in pur-

suance of said Writ expose for sale at Public Auction at the Police Station, Kalakaua Hale, in Honolulu, Island of Oahu, Territory of Hawaii, at 12 o'clock Noon, of Saturday, the 7th day of February, A. D., 1903, and did sell the following described property of the Defendant, to wit:

“1. All that certain lot of land situated at Pilaa, Island of Kauai, containing about 10 Acres, devised to said F. C. BERTELMAN by the last Will and Testament of his father, C. BERTELMAN, deceased, and in said Will described at Lot No. 2.”

“2. All the following described lands of C. BERTELMAN ESTATE situated on the Island of Kauai, Territory of Hawaii, in which the said F. C. BERTELMAN will have, after the expiration of the [47] Lease to the KILAUEA SUGAR COMPANY, for 25 years from the 1st day of November, A. D. 1890, a one-third interest:

“Ahupuaa of Kahili, 1789 Acres;

“Ahupuaa of West Waiakalua, 332.4 Acres;

“Ahupuaa of Pilaa, 1520 Acres;

“Land of Lepeuli, 102 Acres;

“5 shares Moloaa Hui Land and sundry Kuleanas,” to MARY LUCAS, wife of CHARLES LUCAS, of said Honolulu, she being the highest bidder therefor, for the sum of Thirty Dollars (\$30.) for the First described parcel of land, and Fifty Dollars (\$50.) for the Second described lands, a total of Eighty Dollars (\$80.);

AND IN CONSIDERATION of the said sum of Eighty Dollars, (\$80.) to me paid by the said MARY LUCAS, the receipt whereof is hereby acknowledged,

I do hereby grant, bargain, sell, assign, transfer and convey unto the said MARY LUCAS, all the right, title and interest of the said F. C. BERTELMAN in and to the said property as above described.

TO HAVE AND TO HOLD the aforementioned and described interest, together with all and singular the tenements, hereditaments and appurtenances thereto belonging, to the said MARY LUCAS, her heirs and assigns forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th day of February, A. D. 1903.

(Signed) ARTHUR M. BROWN,
High Sheriff, Territory of Hawaii.

Territory of Hawaii,

Island of Oahu,—ss.

On this 9th day of February, A. D. 1903, personally appeared before me ARTHUR M. BROWN, High Sheriff of the Territory of Hawaii, known to me to be the person described in and who executed the same freely and voluntarily and for the uses and purposes therein set forth.

[Seal] (Signed) CHAS. F. CHILLING-
WORTH,

Notary Public, in and for the First Judicial Circuit,
Territory of Hawaii. [48]

[Endorsed]: 7284—11:35. Bill of Sale. Arthur M. Brown, High Sheriff, Ter. of Haw. to Mary Lucas. Honolulu, H. T. Dated, February 7, A. D. 1903. Consideration: \$80. Interest of F. C. Bertelman in Lands on Kauai. (Indexed.) Register Office Oahu,—ss. Received for Record this 11th Day of

February A. D. 1903, at 11:35 o'clock A. M., and Recorded in Liber 248 on Pages 82-84 and Compared. (Signed) Thos. G. Thrum, Registrar of Conveyances. By, Deputy Registrar.

Recording Fees \$3.50 Pd. 1.

3.50 Pd. [49]

**Exhibit "L" to Agreed Statement of Facts—Deed,
March 14, 1903, Smith to Lucas.**

Stamps Ter. \$1.00.

KNOW ALL MEN BY THESE PRESENTS: That I, JUSTINE BERTELMANN SMITH, wife of W. J. Smith, of Honolulu, Island of Oahu, Territory of Hawaii, in consideration of Fifty Dollars (\$50) to me paid by MARY N. LUCAS, wife of Charles Lucas of said Honolulu, the receipt whereof is hereby acknowledged, hereby give, grant, bargain, sell and convey all of my undivided right, title, interest and estate, claim and demand, vested or contingent, present or prospective, in law or in equity, in and to the following tracts and parcels of land situated on the Island of Kauai, Territory of Hawaii, viz.:

1st. The Ahupuaa of Kahili containing an area of 1789 acres, more or less, being the same premises described in Royal Patent Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Bertelmann by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86, folio 220;

2nd. The Ahupuaa of West Waiakalua containing an area of 332 40/100 acres more or less, being

premises also conveyed to said Christian Bertelmann by said deed;

3rd. The Ahupuaa of Pilaa containing an area of 1520 acres more or less; being the same premises described in Land Commission Award 8559B to W. C. Lunailo, and conveyed to said Christian Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5th, 1878, of record in the Hawaiian Registry of Deeds in Liber 53, folio 284;

4th. All that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres more or less; being the same premises conveyed to said Christian Bertelmann by deed of Wm. Worner, dated March 31st, 1883, of record in the Hawaiian Registry of Deeds in Liber 79, folios 386-387; [50]

5th. Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same;

6th. All kuleanas situated within or adjacent to the boundaries of any of the above-described premises, and all other parcels and tracts of land upon the Island of Kauai heretofore owned by Christian Bertelmann;

7th. All streams of water and water rights upon or appurtenant to all and singular the above-mentioned premises;

8th. All leases of any portion of said premises made by the said Christian Bertelmann, together with all rents, remainders and reversions of the same. And being the same premises leased by Christian

Bertelmann to the Kilauea Sugar Company, a corporation, by lease dated November 1, A. D. 1890, and devised and bequeathed to me by will of said Christian Bertelmann, dated December 12, 1891, and now on file in the Clerk's office of the Supreme Court of the Territory of Hawaii.

TO HAVE AND TO HOLD all said undivided right, title, interest and estate, claim and demand in said premises with all the rights, privileges and appurtenances thereto belonging to the said Mary N. Lucas, and her heirs and assigns forever.

And I hereby for myself and my heirs, executors and administrators covenant with said Mary N. Lucas and her heirs and assigns that I am lawfully seized in fee simple of the granted right, title, interest and estate in said premises; that they are free from all incumbrances, save and except that certain lease to the Kilauea Sugar Company made by Christian Bertelmann, dated November 1, 1890, for the term of twenty-five (25) years from November 1, 1890, at an annual rental of Six Thousand Dollars (\$6000); that I will, and my heirs, executors and administrators shall warrant and defend the same to the said Mary N. Lucas and her heirs and assigns forever against the lawful claims and [51] demands of all persons, save under said lease.

And for the consideration aforesaid I do hereby transfer, assign, and set over unto the said Mary N. Lucas and her heirs and assigns forever, all my right, title and interest in and to any and all rents due or to become due to me under the aforesaid lease to said Kilauea Sugar Company, or any other and all leases

of said premises or any portion thereof.

And I, W. J. Smith, husband of said Justine Bertelmann Smith, for said consideration do hereby consent to and approve of the foregoing conveyance.

IN WITNESS WHEREOF, we the said Justine Bertelmann Smith and W. J. Smith hereunto set our hands and seals this 14th day of March, 1903.

(Signed) JUSTINE BERTELMANN SMITH.

(Signed) WM. J. SMITH.

Executed in presence of:

(Signed) WM. J. FORBES.

Territory of Hawaii,

Island of Oahu,—ss.

On this 14th day of March, A. D. 1903, personally appeared before me, Justine Bertelmann Smith and Wm. J. Smith her husband, known to me to be the persons described in and who executed the foregoing instrument, who severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein set forth. And the said Justine Bertelmann Smith on an examination by me separate and apart from her husband further acknowledged that she executed the same without compulsion, fear or constraint from her said husband.

[Seal] (Signed) WM. J. FORBES,

Notary Public, First Judicial Circuit. [52]

[Endorsed]: 7648-1:41. Deed. Justine Bertelmann Smith to Mary N. Lucas. Dated March 14, 1903. (Indexed.) Register Office, Oahu ss: Received for record this 16th day of March, A. D. 1903, at 1:41 o'clock P. M. and recorded in Liber 248, on

pages 190, 191, 192, and compared. (Signed) Thos. G. Thrum, Registrar of Conveyances. By, Deputy Registrar.

Recording Fees, \$5.00.

1. [53]

**Exhibit "M" to Agreed Statement of Facts—Deed,
May 18, 1903, Bannister to Lucas.**

Territorial Stamps—\$9.00.

KNOW ALL MEN BY THESE PRESENTS:
That MARY JOSEPHINE HATTIE BERTELMANN BANNISTER, wife of Andrew T. Bannister, of Honolulu, Island of Oahu, Territory of Hawaii, in consideration of Two Thousand Five Hundred Dollars (\$2,500) to me paid by MARY N. LUCAS, wife of Charles Lucas of said Honolulu, the receipt whereof is hereby acknowledged, hereby give, grant, bargain, sell and convey all of my right, title, interest and estate, claim and demand, vested or contingent, present or prospective, in law or in equity, in and to the following tracts and parcels of land situated on the Island of Kauai, Territory of Hawaii, viz.:—

1st: The Ahupuaa of Kahili containing an area of 1789 acres more or less, being the same premises described in Royal Patent Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Bertelmann by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86, folio 220.

2d: The Ahupuaa of West Waiakalua, containing an area of 332 40/100 acres more or less, being premises also conveyed to said Christian Bertelmann by said deed.

3d: The Ahupuaa of Pilaa containing an area of 1520 acres more or less; being the same premises described in Land Commission Award 8559B to W. C. Lunalilo, and conveyed to said Christian Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5th, 1878, of record in the Hawaiian Registry of Deeds in Liber 53, folio 284.

4th: All that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres more or less, being the same premises conveyed to said Christian Bertelmann by deed of Wm. Worner, dated March 31st, 1883, of record in the [54] Hawaiian Registry of Deeds in Liber 79, folios 386, 387.

5th: Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

6th: All kuleanas situated within or adjacent to the boundaries of any of the above-described premises, and all other parcels and tracts of land upon the Island of Kauai heretofore owned by Christian Bertelmann.

7th: All streams of water and water rights upon or appurtenant to all and singular the above-mentioned premises.

8th: All leases of any portion of said premises made by the said Christian Bertelmann together with all rents, remainders and reversions of the same, and being the same premises leased by Christian Bertelmann to the Kilauea Sugar Company, a corporation, by lease dated November 1, A. D. 1890, and

devised and bequeathed to me by will of said Christian Bertelmann, dated December 12, 1891, and now on file in the Clerk's office of the Supreme Court of the Territory of Hawaii.

9th: All that piece or parcel of land situate at Pilaa, Island of Kauai, Territory of Hawaii, devised to me by the will of Christian Henry Bertelmann, dated the 12th day of December, 1891, and now on file in the Clerk's office of the Supreme Court of the Territory of Hawaii, and known as Lot Number Eight (8) on the map attached to said will.

TO HAVE AND TO HOLD all said right, title, interest and estate, claim and demand in said premises with all the rights, privileges and appurtenances thereto belonging to the said Mary N. Lucas, and her heirs and assigns forever.

AND I hereby for myself and my heirs, executors, and administrators, covenant with said Mary N. Lucas and her heirs and assigns that I am lawfully seized in fee simple of the granted [55] premises; that they are free from all incumbrances, save and except that certain lease to the Kilauea Sugar Company made by Christian Bertelmann, dated November 1, 1890, at an annual rental of Six Thousand Dollars (\$6,000); that I will, and my heirs, executors and administrators shall warrant and defend the same to the said Mary N. Lucas and her heirs and assigns forever against the lawful claims and demands of all persons save under said lease.

AND for the consideration aforesaid I do hereby transfer, assign, and set over unto the said Mary N. Lucas and her heirs and assigns forever, all my right,

title, interest, share and proportion, of, in and to any and all rents due or to become due under the aforesaid lease to said Kilauea Sugar Company or any other and all leases of said premises or any portion thereof.

AND I, Andrew T. Bannister, husband of said Mary Josephine Hattie Bertelmann Bannister, for said consideration do hereby consent to and approve of the foregoing conveyance.

IN WITNESS WHEREOF, we, the said Mary Josephine Hattie Bertelmann Bannister and Andrew T. Bannister, hereunto set our hands and seals this 18th day of May, 1903.

(Signed) MRS. HATTIE BANNISTER.

(Signed) ANDREW T. BANNISTER.

Executed in presence of:

(Signed) R. D. MEAD. [56]

Territory of Hawaii,
Island of Oahu,—ss.

On this 18th day of May, A. D. 1903, personally appeared before me, Mary Josephine Hattie Bertelmann Bannister, usually known as Hattie Bannister, and Andrew T. Bannister, her husband, known to me to be the persons described in and who executed the foregoing instrument, who severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein set forth. And the said Mary Josephine Hattie Bertelmann Bannister, known as Hattie Bannister, on an examination by me separate and apart from her husband further acknowledged that she executed the

same without compulsion, fear or constraint from her said husband.

[Seal] (Signed) WM. J. FORBES,
Notary Public, First Judicial Circuit. [57]

[Endorsed]: 8863-10:40. Deed. Mary Josephine Hattie Bertelmann Bannister to Mary N. Lucas. Dated May 18, 1903. (Indexed.) Register Office, Oahu,—ss: Received for record this 6th day of July, A. D. 1903, at 10:40 o'clock A. M. and recorded in Liber 249, on pages 314, 315 and 316, and compared. (Signed) Thos. G. Thrum, Registrar of Conveyances. By, Deputy Registrar.

Recording Fees, \$5.50.

9. [58]

**Exhibit "N" to Agreed Statement of Facts—Deed,
October 12, 1904, Ross to Lucas.**

Stamps Territorial—\$6.00.

KNOW ALL MEN BY THESE PRESENTS,
That I, BEATRICE BERTELMANN ROSS, wife
of R. G. Ross, of Honolulu, Island of Oahu, Territory
of Hawaii, in consideration of the sum of Two Thou-
sand (\$2,000) Dollars to me paid by Mary N. Lucas,
wife of Charles Lucas of said Honolulu, the receipt
whereof is hereby acknowledged, hereby give, grant,
bargain, sell and convey all of my right, title, interest
and estate, claim and demand, vested or contingent,
present or prospective in law or in equity, in and to
the following tracts and parcels of land situated on
the Island of Kauai, Territory of Hawaii, viz:—

1st: The Ahupuaa of Kahili containing an area of
1789 acres, more or less, being the same premises de-

scribed in Royal Patent Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Bertelmann by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86, folio 220.

2d: The Ahupuaa of West Waiakalua, containing an area of 332 40/100 acres, more or less, being premises also conveyed to said Christian Bertelmann by said deed.

3d: The Ahupuaa of Pilaa containing an area of 1520 acres, more or less; being the same premises described in Land Commission Award 8559B to W. C. Lunalilo, and conveyed to said Christian Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5th, 1878, of record in the Hawaiian Registry of Deeds in Liber 53, folio 284.

4th: All that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres, more or less, being the same premises conveyed to said Christian Bertelmann by deed of Wm. Worner, dated March 31st, 1883, of record in the [59] Hawaiian Registry of Deeds in Liber 79, folios 386, 387.

5th: Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

6th: All kuleanas situated within or adjacent to the boundaries of any of the above-described premises, and all other parcels and tracts of land upon the Island of Kauai heretofore owned by Christian Bertelmann.

7th: All streams of water and water rights upon or appurtenant to all and singular the above-mentioned premises.

8th: All leases of any portion of said premises made by the said Christian Bertelmann together with all rents, remainders and reversions of the same,

And being the same premises leased by Christian Bertelmann to the Kilauea Sugar Company, a corporation, by lease dated November 1, A. D. 1890, and devised and bequeathed to me by will of said Christian Bertelmann, dated December 12, 1891, and now on file in the Clerk's office of the Supreme Court of the Territory of Hawaii.

Also all that piece or parcel of land situate at Pilaa, Island of Kauai, Territory of Hawaii, devised to me by the will of said Christian Henry Bertelmann, dated the 12th day of December, 1891, and now on file in the Clerk's office of the Supreme Court of the Territory of Hawaii, and known as Lot No. 9 on the map attached to said will.

TO HAVE AND TO HOLD all said right, title, interest and estate, claim and demand in said premises with all the rights, privileges and appurtenances thereto belonging to the said Mary N. Lucas, and her heirs and assigns forever.

AND I hereby for myself and my heirs, executors, and administrators, covenant with said Mary N. Lucas and her heirs and assigns that I am lawfully seized in fee simple of the [60] granted premises; that they are free from all incumbrances, save *that* except that certain lease to the Kilauea Sugar Company made by Christian Bertelmann,

dated November 1, 1890, at an annual rental of Six Thousand Dollars (\$6,000); that I will, and my heirs, executors and administrators shall warrant and defend the same to the said Mary N. Lucas and her heirs and assigns forever against the lawful claims and demands of all persons save under said lease.

AND for the consideration aforesaid I do hereby transfer, assign, and set over unto the said Mary N. Lucas and her heirs and assigns forever, all my right, title, interest, share and proportion, of, in and to any and all rents due or to become due under the aforesaid lease to said Kilauea Sugar Company, or any other and all leases of said premises or any portion thereof;

AND I, R. G. Ross, husband of said Beatrice Bertelmann Ross, for the consideration aforesaid, do hereby consent to, and approve of, the foregoing conveyance.

IN WITNESS WHEREOF, we the said Beatrice Bertelmann Ross and R. G. Ross, hereunto set our hands and seals this 12th day of October, 1904.

(Signed) BEATRICE BERTELMANN
ROSS.

(Signed) RIDEAU G. ROSS. [61]

Territory of Hawaii,
Island of Oahu,—ss.

On this 12th day of October, A. D. 1904, personally appeared before me Beatrice Bertelmann Ross and Rideau G. Ross, her husband, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily for the uses

and purposes therein set forth. And the said Beatrice Bertelmann Ross, on an examination by me separate and apart from her husband, further acknowledged that she executed the same without compulsion, fear or constraint from her said husband.

[Seal] (Signed) WM. J. FORBES,
Notary Public, First Judicial Circuit. [62]

[Endorsed]: 2745-3:03. Deed. Beatrice Ross to Mary Lucas. Dated October 12, 1904. (Indexed.) Register Office, Oahu,—ss: Received for record this 12th day of October, A. D. 1904, at 3:03 o'clock P. M. and recorded in Liber 258 on pages 427-429, and compared. (Sgd.) Chas. H. Merriam, Registrar of Conveyances. By, Deputy Registrar.

Recording fees, \$5.00.

6. [63]

**Exhibit "O" to Agreed Statement of Facts—Deed,
January 16, 1907, Hogan to Lucas.**

Stamps Ter.—\$9.00.

KNOW ALL MEN BY THESE PRESENTS:
That I, ANGELINE K. HOGAN, wife of J. J. Hogan, of Honolulu, Island of Oahu, Territory of Hawaii, in consideration of Three Thousand Dollars (\$3,000.00) to me paid by MARY N. LUCAS, wife of Charles Lucas, of said Honolulu, the receipt whereof is hereby acknowledged, hereby give, grant, bargain, sell and convey all of my undivided right, title, interest and estate, claim and demand, vested or contingent, present or prospective, in law or in equity, in and to the following tracts and parcels of land situated on the Island of Kauai, Territory of Hawaii, viz:—

1st: The Ahupuaa of Kahili, containing an area of 1789 acres, more or less, being the same premises described in Royal Patent Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Bertelmann by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86, folio 220;

2d: The Ahupuaa of West Waiakalua, containing an area of 332 40/100 acres, more or less, being premises also conveyed to said Christian Bertelmann by said deed;

3d: The Ahupuaa of Pilaa, containing an area of 1520 acres, more or less; being the same premises described in Land Commission Award 8559B to W. C. Lunalilo, and conveyed to said Christian Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5th, 1878, of record in the Hawaiian Registry of Deeds in Liber 53, folio 284;

4th: All that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres, more or less; being the same premises conveyed to said Christian Bertelmann [64] by deed of William Worner, dated March 31st, 1883, of record in the Hawaiian Registry of Deeds in Liber 79, folios 386, 387;

5th: Five undivided shares or parts of shares in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same;

6th: All kuleanas situate within or adjacent to the boundaries of any of the above-described premises, and all other parcels and tracts of land upon the

Island of Kauai heretofore owned by Christian Bertelmann;

7th: All streams of water and water rights upon or appurtenant to all and singular the above-mentioned premises.

8th: All leases of any portion of said premises made by the said Christian Bertelmann together with all rents, remainders and reversions of the same.

Said lands and premises above enumerated, being the same premises leased by Christian Bertelmann to the Kilauea Sugar Company, a corporation, by lease dated November 1, A. D. 1890, and devised and bequeathed to me by will of said Christian Bertelmann, dated December 12, 1891, and now on file in the Clerk's office of the Supreme Court of the Territory of Hawaii.

TO HAVE AND TO HOLD all said lands and premises and all my undivided right, title, interest and estate, claim and demand therein with all the rights, privileges and appurtenances thereto belonging to the said Mary N. Lucas, and her heirs and assigns forever.

AND I hereby for myself and my heirs, executors and administrators covenant with said Mary N. Lucas and her heirs and assigns that I am lawfully seized in fee simple of the granted right, title, interest and estate in said premises; that they [65] are free from all incumbrances, save and except that certain lease to the Kilauea Sugar Company made by Christian Bertelmann dated November 1, 1890, for the term of twenty-five (25) years from November 1, 1890, at an annual rental of Six Thousand Dol-

lars (\$6,000); that I will, and my heirs, executors and administrators shall warrant and defend the same to the said Mary N. Lucas and her heirs and assigns forever against the lawful claims and demands of all persons, save under said lease.

AND for the consideration aforesaid I do hereby transfer, assign, and set over unto the said Mary N. Lucas and her heirs and assigns forever, all my right, title and interest in and to any and all rents due or to become due to me under the aforesaid lease to said Kilauea Sugar Company, or any other and all leases of said premises or any portion thereof.

AND, I, J. J. Hogan, husband of said Angeline K. Hogan, for said consideration do hereby consent to and approve of the foregoing conveyance, and release and quitclaim unto the said Mary N. Lucas, and her heirs and assigns, all my right, title and interest in and to the said premises hereinabove described.

IN WITNESS WHEREOF we, the said Angeline K. Hogan and J. J. Hogan, hereunto set our hands and seals this 16th day of January, A. D. 1907.

(Signed) ANGELINE K. HOGAN,

(Signed) JOSEPH J. HOGAN. [66]

Territory of Hawaii,
County of Oahu,—ss.

On this Sixteenth day of January, A. D. 1907, personally appeared before me Angeline K. Hogan and Joseph J. Hogan, her husband, known to me to be the persons described in and who executed the foregoing instrument, who severally acknowledged to me that they executed the same freely and volun-

tarily and for the uses and purposes therein set forth. AND said Angeline K. Hogan on a private examination by me held separate and apart from her said husband further acknowledged to me that she executed the same freely and without any compulsion, fear or constraint of her said husband.

[Seal] (Signed) WILLIAM SAVIDGE,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: 665-3:32. Deed. Angeline K. Hogan to Mary N. Lucas. Dated, January 1907. (Indexed). Register Office Oahu, ss: Received for Record this 16th day of January, A. D. 1907, at 3:32 o'clock P. M. and recorded in Liber 287 on pages 154-157, and compared. (Sgd.) Chas. H. Merriam, Registrar of Conveyances. By, Deputy Registrar. Recording Fees, \$5.00.

9. [67]

**Exhibit "P" to Agreed Statement of Facts—Deed,
November 29, 1915, Baker to Lucas.**

Stamps U. S. Revenue—\$5.00.

Stamps Ter.—\$12.00.

Know all men by these presents, that I, Wilhelmina B. Baker, formerly Wilhelmina B. Hall, and originally Wilhelmina Bertelmann, of Honolulu, Oahu, Territory of Hawaii, daughter of Christian Henry Bertelmann, late of Pilaa, Kauai, in consideration of Five Thousand Dollars (\$5,000.00) to me paid by Mary N. Lucas of said Honolulu, receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey, remise, release and forever

quitclaim unto the said Mary N. Lucas all of the right, title, interest, estate, claim and demand, vested or contingent, present or prospective, in law or in equity, devised to me under the will of said Christian Henry Bertelmann, in and to all of the lands and property described in Schedule "A" hereunder written and hereby made a part hereof, and also in and to all other lands, if any, wheresoever situate left by my father, the said Christian Henry Bertelmann, at the time of his death, together with all other, if any, my right, title and interest in and to the said lands and property and every part thereof, excepting only from this conveyance and release the same one hundred (100) acres of land situate on the south side of the Government road in said Pilaa in which are included the homestead premises of the said Christian Henry Bertelmann, testator as aforesaid, and which said parcel of one hundred (100) acres is described by metes and bounds in Schedule "B" hereunder written and hereby made a part hereof and which said parcel of one hundred (100) acres is the same parcel devised in and by paragraph marked "Second" in the said Will of said testator:

SCHEDULE "A" HEREINABOVE REFERRED
TO.

All of the following tracts and parcels of land and other [68] property situated on the Island of Kauai, to wit:

1. The Ahupuaa of Kahili containing an area of 1789 acres more or less; being the same premises described in Royal Patent—Land Commission

Award 8559B to W. C. Lunalili, and conveyed to Christian Henry Bertelmann, late of Pilaa, Kauai, now deceased, by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86 folios 220.

2. The Ahupuaa of West Waiakalua containing an area of 332 40/100 acres more or less, being premises also conveyed to said Christian Henry Bertelmann by said deed.

3. The Ahupuaa of Pilaa containing an area of 1520 acres more or less; being the same premises described in Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Henry Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5, 1878, of record in the Hawaiian Registry of Deeds in Liber 53 folio 284.

4. All of that fact of land situated at Lepeuli District of Koolou, Kauai, containing an area of 102 acres more or less; being the same premises conveyed to said Christian Henry Bertelmann by deed of Wm. Worner, dated March 31, 1883, of record in the Hawaiian Registry of Deeds in Liber 79 folio 386-387.

5. Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

6. All kuleanas belonging to the said Christian Henry Bertelmann situated within or adjacent to the boundaries of any of the above-described premises and all other parcels and tracts of land upon the Island of Kauai owned by the said Christian

Henry Bertelmann at the time of his death.

7. All streams of water and water rights upon or appurtenant [69] to all and singular the above-mentioned premises.

8. All leases of any portion of said premises made by Christian Henry Bertelmann together with all rents, remainders, and reversions of the same.

And being the same premises leased by my father, the said Christian Henry Bertelmann, to the Kilauea Sugar Company, a corporation, by lease dated November 1, 1890.

SCHEDULE "B" HEREINABOVE REFERRED
TO.

Commencing on the south side of the Government road at a stone, beneath a horse-shoe and running: S. S. W. 1400 feet; thence S. S. E. 850 feet; thence E. 1906 feet; thence S. by W. 1-3 W. 1920 feet; thence E. by S. $\frac{3}{4}$ S. 2032 feet; containing an area of one hundred (100) acres and no more, and these foregoing metes and bounds shall yield to the area in case of discrepancy.

To have and to hold the granted and released premises with all of the rights, easements, privileges and appurtenances thereto appertaining unto the said Mary N. Lucas and her heirs and assigns, to their own use and behoof forever.

And I, the said Wilhelmina B. Baker, for myself and my heirs, executors and administrators, do hereby covenant with the said Mary N. Lucas and her heirs and assigns, that the granted and released premises are free and clear of all encumbrances

made or suffered by me, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said Mary N. Lucas and her heirs and assigns against the lawful claims and demands of all persons claiming by, through, or under me, but against none other. [70]

And for the consideration aforesaid, I, Charles H. Baker, husband of the said Wilhelmina B. Baker, do hereby assent to the execution and delivery by my said wife of this conveyance and release.

In witness whereof, we, the said Wilhelmina B. Baker and Charles H. Baker, her husband, hereunto set our hands and seals this 29th day of November, A. D. 1915.

(Signed) WILHELMINA B. BAKER.

(Signed) CHARLES H. BAKER.

Territory of Hawaii,
City and County of Honolulu,—ss.

On this 29th day of November, A. D. 1915, before me personally appeared Wilhelmina B. Baker and Charles H. Baker, her husband, known to me to be the persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the same of their free act and deed.

[Seal] (Signed) J. M. CAMARA,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [71]

[Endorsed]: 13900-4:11. Quitclaim Deed.
Dated, November 29, 1915. Wilhelmina B. Baker
to Mary N. Lucas. (Indexed.) Territory of
Hawaii. Office of Registrar of Conveyances. Re-

ceived for Record this 29th day of November, A. D. 1915, at 4:11 o'clock, P. M. and Recording in Liber 435 on pages 330-333, and compared. (Signed) Chas. H. Merriam, Registrar of Conveyances. By _____, Deputy Registrar.

Recording Fee, \$5.50 Paid.

12. [72]

No. 927. Supreme Court. Territory of Hawaii. October Term, 1915. Walter W. Scott, Janet M. Scott, Rubena F. Scott, and the Bishop Trust Company, Limited, Guardian, v. Mary N. Lucas. Submission on Case Agreed. Statement of Case. Filed February 28, 1916, at 10:25 A. M. J. A. Thompson, Clerk. [73]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1915.

BEFORE THE JUSTICES OF SAID COURT.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LTD., a Corporation, Guardian of the Estate of said WALTER W. SCOTT, JANET M. SCOTT, and RUBENA F. SCOTT, Minors,

Plaintiffs,

v.

MARY N. LUCAS,

Defendant.

Amendments to Agreed Statements of Facts.

SUBMISSION ON CASE AGREED.

The parties hereto do hereby stipulate and agree

that the submission heretofore filed herein be amended by inserting immediately following the paragraph thereof marked "18," the following paragraphs:

18a. That the plaintiffs herein claim that under the terms of the will aforesaid of the said Christian Henry Bertelmann, and particularly under the terms of the paragraph or article thereof marked "Third," they are entitled to receive, in order that the interest they claim to have in the lands referred to in Article marked "Third" in the will of said testator may be defeated, from the said Mary N. Lucas, grantee and assignee as aforesaid of the three sons aforesaid of the said Christian Henry Bertelmann, the sum of five thousand (\$5000) dollars which their mother would have been entitled to receive from the said three sons or their grantee or assignee had she survived the expiration of the twenty-five year lease made by the said Christian Henry Bertelmann to the said Kilauea Sugar Company and referred to in the said will of the said [74] Christian Henry Bertelmann; that the plaintiffs further claim that the right to receive and the duty to pay the respective sums of five thousand (\$5000) dollars referred to in said article or paragraph marked "Third" in said will are by the said will made contingent upon the survival of each of the daughters of the said testator, including the said Catherine Haunani Scott, at the time of the death of the testator and are not made contingent upon such survival at the expiration of the said twenty-five year lease; and that the plain-

tiffs further claim that they together are now the owners of an undivided one-ninth interest (an undivided one-twenty-seventh each) in all of the lands of the said testator referred to in said paragraph or article marked "Third" in his said will, subject only to their said title and interest being defeated by and upon the payment to them, within one year from November 1, 1915, of the sum of five thousand (\$5000) dollars in all under and in accordance with the provisions of said paragraph or article marked "Third," and that they are entitled to a one-ninth (a one twenty-seventh each) of all the rents and issues of said lands.

18b. That the defendant herein claims that under the terms of the will aforesaid of the said Christian Henry Bertelmann, and particularly under the terms of the paragraph or article thereof marked "Third," neither the said plaintiffs nor any of them are entitled to receive from the said Mary N. Lucas, grantee and assignee as aforesaid of the three sons aforesaid of the said Christian Henry Bertelmann, or at all, the sum of five thousand (\$5000) dollars or any other sum which their mother would have been entitled to receive from the said three sons or their grantee or assignee had she survived the expiration of the twenty-five year lease aforesaid; that the defendant herein further claims that the right to receive [75] and the duty to pay the respective sums of five thousand (\$5000) dollars referred to in said article or paragraph marked "Third" in said will were by the said will made contingent upon the survival of each of the daugh-

ters of the testator, including the said Catherine Haunani Scott, until and at the expiration of the said twenty-five year lease and not merely until or at the death of the testator aforesaid; and that the defendant herein further claims that the said plaintiffs have, and each of them has, no right, title, interest or estate in or to any of the lands of the said testator referred to in paragraph or article marked "Third" in his said will or in or to any sum or payment of five thousand (\$5000) dollars referred to or provided for in said paragraph or article in said will, or in the rents and issues of said lands; and that the said Mary N. Lucas, defendant as aforesaid, is now the undisputable owner, i. e., the owner in fee simple, absolute and indefeasible, of all of the lands of the said testator referred to in said paragraph or article marked "Third" without making any payment of the sum of five thousand (\$5000) dollars or any other sum to the three plaintiffs or to any of them.

18c. That the plaintiffs on the one hand and the defendant on the other hand held and advanced to each other, prior to the institution of the above-entitled proceeding, the conflicting views and claims hereinabove set forth in paragraphs marked "18a" and "18b" and were and are unable to reconcile and settle the same.

The parties herein further stipulate and agree that the submission herein may be regarded as amended in the foregoing particulars upon the court's assent hereto being duly recorded,—[76]

and without the filing of a new or amended submission.

Dated, Honolulu, T. H., April 22, 1916.

WALTER M. SCOTT,
JANET SCOTT, and
RUBENA F. SCOTT, Minors, etc.,
By Their Attorney,
(Sgd.) E. A. MOTT-SMITH,
MARY N. LUCAS,
By Her Attorney,
(Sgd.) A. PERRY.

The foregoing amendment may be regarded as made.

Dated, Honolulu, T. H., April 22, 1916.

By the Court.

(Sgd.) J. A. THOMPSON,
Clerk.

Approved:

(Sgd.) A. G. M. ROBERTSON,
Chief Justice. [77]

[Endorsed]: No. 927. Supreme Court, Territory of Hawaii. October Term, 1915. Walter W. Scott Janet M. Scott, Rubena F. Scott, and the Bishop Trust Company, Limited, Guardian v. Mary N. Lucas. Submission on Case Agreed. Amendment to Submission. Filed April 22, 1916, at 11:55 A. M. J. A. Thompson, Clerk. [78]

In the Supreme Court of the Territory of Hawaii.
OCTOBER TERM, 1915.

WALTER W. SCOTT, a Minor, JANET M. SCOTT,
a Minor, RUBENA F. SCOTT, a Minor, and
THE BISHOP TRUST COMPANY, LIM-
ITED, a Corporation, Guardian of the Estate
of Said WALTER W. SCOTT, JANET M.
SCOTT and RUBENA F. SCOTT, Minors,
v.

MARY N. LUCAS.

Opinion.

No. 927.

SUBMISSION UPON AGREED STATEMENT
OF FACTS.

Argued April 13, 1916.

Decided June 13, 1916.

ROBERTSON, C. J., WATSON & QUARLES, JJ.

Wills—Vested Remainder—Defeasance—Condition
Impossible of Performance.

Where by a last will and testament a remainder in fee
is vested in a devisee subject to defeasance by a
condition subsequent and prior to the perform-
ance of the condition such condition becomes im-
possible of performance, the vested remainder
becomes absolute in the devisee and no longer
subject to the defeasance provided for in the will.

[79]

OPINION OF THE JUSTICES, BY QUARLES, J.
(ROBERTSON, C. J., dissenting.)

This is a controversy submitted upon agreed facts

to obtain a decree quieting title to an undivided one-ninth interest in and to certain lands described in the submission of facts. The plaintiffs, Walter W. Scott, Janet M. Scott and Rubena F. Scott, minor children of Catherine Haunani Scott (nee Bertelmann), appear by their guardian as plaintiffs, and Mary N. Lucas, who claims the said undivided interest, appears as defendant. The settlement of this controversy depends upon the construction of certain provisions in the last will and testament of Christian Henry Bertelmann, upon which the merits of the controversy must be decided. This will has heretofore been before this Court for construction and the provisions here involved construed (*Bertelmann v. Kahilina*, 14 Haw. 378), where it was held that each of the six daughters of the testator, under the first and fourth items of the will, took vested remainders in fee subject to defeasance upon payment to each of them of the sum of \$5,000 by the three sons, or one or more of them, of the testator, as provided in the third item of the will. That item reads:

“At the expiration of the 25 years lease with the Kilauea Sugar Co. it is my sincere wish and will that my lands shall befall in equal shares and interest upon my three sons: Frank Charles, Henry Godfrey, and Christian Sylvester Bertelmann or then surviving sons or son. Provided, however, that at such a time these my sons or son shall pay to each one of my daughters or surviving daughters the sum of five thousand dollars \$5000. In case one or two of my sons should

be at that time, or within a year from that time unable to furnish, produce or raise the necessary amount to pay to each one of my daughters or surviving daughters his share of the \$5000.00 per capita, the two or the one of my sons will have a right to buy the whole of my lands now leased to the K. S. Co. by paying:

“1. To each of my daughters or surviving daughters the amount aforesaid of \$5000.00.

“2. To my shortcoming son or sons the same amount [80] of \$5000.00 each, being the same share as will be paid to my daughters. By doing so, they my sons or he my son will enter in full possession of all my lands; and their or his right and title will be undisputable, provided they or he (my sons or son) comply and fulfill the above-mentioned conditions.

“3. To my wife Susan Bertelmann a life rent of \$2000.00 per annum. I make the payment of all these amounts above given a charge upon all my estate.”

The defendant has purchased all of the interest of the three sons and of all of the daughters except the late mother of the plaintiffs, she having died September 10, 1905, leaving the plaintiffs as her surviving children. The lease mentioned in the will has expired, and the one year in which the sons, or one or more of them, may purchase or acquire the interest of their sisters under the third item of the will, hereinabove quoted, is now running. It is contended on behalf of the defendant that Mrs. Scott, mother of the plaintiffs, having died prior to the expiration

of the lease, the plaintiffs have no interest in the lands in question, and that the provision as to payment of \$5000 to each of the daughters does not apply to the interest which Mrs. Scott would have if she had survived the expiration of the lease; and, that the defendant takes the whole freed from the charge of said \$5000. In furtherance of this contention it is earnestly insisted on the part of the defendant that the former decision to the effect that Mrs. Scott and the other daughters took vested remainders in fee is incorrect and that their interests, respectively, are, and were, contingent upon their survival of the expiration of the lease, and upon the failure of the sons, or one or more of them, to pay to the daughters the \$5000 each. These contentions were, we think, correctly disposed of in the former decision of this Court, for the reasons therein stated. The mother of the plaintiffs took a vested remainder in fee, subject to be defeated by the payment to her by the sons, or one or more of them, of the [81] sum of \$5000 within one year after the expiration of the lease. We do not feel at liberty to disturb that decision which has been acted upon for nearly fourteen years, and which has become an established rule of property so far as the rights here involved are concerned. The former decision, which simplifies and narrows the questions to be here decided, correctly holds that the acquisition of the interests of the daughters under the will by the sons, or one or more of them, was a mere privilege which depended upon a condition precedent—the payment of the prescribed sums—while the defeasance of the vested remainder in the

daughters depended upon a condition subsequent—the payment to each daughter of the sum of \$5000 at the time and in the manner prescribed in the will. The difference between a condition precedent and a condition subsequent is well described in *Winthrop v. McKim*, 51 How. Prac. 323, where the Court at page 327 says:

“Conditions precedent are such as must happen or be performed before the estate can vest.

“Conditions subsequent are such as when they happen or are performed, or are not performed, as the case may be, divest, curtail or abridge an estate already vested.

“It is also a well settled rule that, where an estate is to arise upon a condition precedent, if the condition becomes impossible no estate or interest grows thereupon.

“Upon the other hand, if the performance of a condition subsequent becomes impossible, the condition is void, and the estate vests as though no condition had been imposed.”

These rules are supported by practically all authority, English and American, from the time of Sir William Blackstone to the present. Blackstone (Book 2, 154, 156) says:

“An estate on condition expressed in the grant itself, is where an estate is granted, either in fee-simple or otherwise, with the express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification or condition. These conditions are, therefore,

either precedent or subsequent. Precedent are such as must happen or be performed before the estate can vest or be enlarged; subsequent are such, by the failure or nonperformance of which an estate [82] already vested may be defeated.

* * * These express conditions, if they be impossible at the date of their creation, or afterward become impossible by the act of God or of the feoffer himself, or if they be contrary to law, or repugnant to the nature of the estate, are void," See 2 Jarman, Wills, 5th ed., pp. 10, 11."

It is well settled that a condition precedent to the vesting of an estate must be strictly construed and fully performed (*Nevins v. Gourley*, 95 Ill. 206, 213; *Martin v. Ballou*, 13 Barb. 119, 132; 4 Kent's Com. (13 ed.) 135, and authorities cited in note c.).

It is also well settled that the performance of a condition subsequent whereby a vested estate is divested must be strictly construed and fully and literally performed else the vested estate remains absolute. The death of Mrs. Scott, mother of the plaintiffs, prior to the termination of the lease, rendered the condition subsequent, whereby the estate which vested in her should be divested, impossible of performance. There is no provision in the will whereby the estate so vested in Mrs. Scott should be divested in any mode or manner other than the one prescribed in the will itself, i. e., the payment to her of \$5,000, a privilege granted to the sons, or one or more of them, by the testator. That condition becoming impossible by the act of God is as though it was never made. The plaintiffs inherited from their mother the estate

bequeathed to her by the will and vested in her as decided by the former decision of this Court. That vested estate could only be defeated by a strict and literal performance of the condition prescribed. (1 Jarman, Wills, 5th ed., 827; 2 Jarman, Wills, 5 ed., 11, 13; Roper on Legacies, 618, 766, 767, 783; Ridgway v. Woodhouse, 7 Beav. 437, 49 Eng. Reprint 1134; Ill. Land & Loan Co. v. Bonner, 75 Ill. 315, 327; McFarland v. McFarland, 177 Ill. 208, 217.) Conditions subsequent are not favored in law (Davis v. Gray, 16 Wall. 203, 230), and are “construed beneficially, in order to save, if possible, the vested estate or interest; and if such condition prove illegal, or incapable of performance, whether as against good [83] morals or as impossible under any circumstances, or is rendered impossible in a particular case and under existing circumstances, the gift whether of real or personal property, relieved of the condition, becomes absolute in effect. (Harrison v. Harrison, 34 S. E. 455, 458.)

We have examined a large number of decisions, both English and American, and find them all in harmony with the rules herein announced. It follows that the plaintiffs inherited from their mother the estate in the lands in controversy vested in her by the will of her father, freed from the condition subsequent whereby the same could be divested if their mother was now living. Under the conclusion at which we have arrived the sons, nor either of them, cannot now defeat the estate which vested in the mother of the plaintiffs in her lifetime by reason of

the provisions of the said will, which descended to and vested in the plaintiffs.

The agreed statement of facts is silent as to whether either of the sons is prepared to and desires to purchase the interest of the plaintiffs in the lands in question. Neither of the sons of the testator is a party to this submission. The defendant claims, in the event that it is held that the vested remainder which the mother of plaintiffs took under the will was not defeated by her death prior to the expiration of the lease, the right to defeat the interests of the plaintiffs by payment to them of the sum of \$5,000, by virtue of her having purchased the interest of each of the testator's sons. This contention fails under the conclusion reached. If the death of Mrs. Scott, mother of the plaintiffs, prior to the expiration of the lease did not make the condition subsequent by which the remainder vested in her by the will could be defeated impossible of performance, as we hold it did, then it would be necessary to decide whether or not the privilege given the sons, or one or more of them, [84] under the third paragraph of the will, to purchase the estate in remainder which vested in the daughters at the death of the testator, passed to the defendant by reason of the deeds from the sons to her. This would involve the consideration of the question as to whether the privilege given the sons, or one or more of them, of buying out the daughters was a mere personal privilege to be performed by the sons only. A study of the will shows clearly a manifest intent on the part of the testator that his three sons and six daughters should share

equally; that the sons, at the expiration of the lease, jointly should have the right of buying out the interests of the daughters if all of the sons were prepared to and desirous of so doing; but, if one or two of the sons should not be so prepared, and so desire, the son or sons so prepared and desirous, should have that right. It was a mere privilege accorded to the sons, or one or more of them, if their desires and ability to purchase should permit, of acquiring all the leased lands. The privilege granted seems personal, and no intention can be found in the will that the daughters should be obliged to sell their respective interests in the lands in question at the stated price of \$5,000 to any one other than the sons, or one or more of them. The condition upon which the remainder which vested in Mrs. Scott, mother of the plaintiffs, could be defeated having become impossible of performance by reason of her death, thus terminating the privilege granted the sons of buying her interest, and defeating the remainder which vested in her, it is unnecessary to determine whether or not that privilege could be exercised by an assignee of the sons.

A judgment may be prepared decreeing that the defendant has no right, title or interest in or to the undivided one-ninth interest in and to the lands described in the agreed statement of facts claimed by the plaintiffs as heirs of Catherine Haunani Scott, vested in the said plaintiffs in fee, and adjudging the plaintiffs to be the absolute owners in fee of said undivided one-ninth interest in [85] and to the

said lands, and it is so ordered.

(Signed) E. M. WATSON,

(Signed) RALPH P. QUARLES.

E. A. MOTT-SMITH, for Plaintiffs.

A. PERRY, for Defendant.

Dissenting Opinion of Robertson, C. J.

The clearly expressed intention of the testator Bertelmann are set forth in the former opinion of this court reported in 14 Haw. 378, 385, 386.

The clearly expressed intention of the testator was that the sons should have the right to acquire the whole of the leased land upon giving to the daughters what the testator evidently considered a fair equivalent for the interests devised to them. It was his will "that my lands shall befall in equal shares and interest upon my three sons"; that they "will have a right to buy the whole of my lands now leased to the K. S. Co."; and that "by doing so, they, my sons, or he, my son, will enter in full possession of all my lands, and their or his right and title will be undisputable" etc. Thus did the testator express a dominating intent. It being a lawful intent it is the duty of this Court to see that it is carried out. Strictly speaking, I think, the estate given each of the daughters was not an estate upon condition subsequent, but a limitation. The condition precedent to be performed by the sons is that they should pay "to each one of the daughters or surviving daughters the sum of five thousand dollars." The third paragraph of the will, taken by itself, supports the view that the remainders of the daughters after the expiration of the lease would be defeated

during the [86] term of the lease. Upon a strict literal interpretation of that paragraph it would have to be held that the sons could acquire title to the whole land by paying \$5,000 to each of such daughters as might be living when the time came for the sons to exercise the right given them, i. e., between the date of the expiration of the lease and one year thereafter. Such literal interpretation is not followed, however, because it is not in harmony with the general intent of the testator as shown by the will as a whole, as held by this Court in the former case, that the daughters were intended to have vested estates in fee. That is, estates which would descend to their respective heirs. But this departure from the language used in the third paragraph, which is required by the entire context, should not be carried to such an extent as to defeat the primary and clearly expressed intent of the testator that his sons should have the right to acquire the whole land by paying for the interests given to the daughters and their heirs. The contingency of the death of a daughter before the expiration of the lease was not provided for. Yet in order to effectuate the intent manifested by the testator it must be held that as to the estate of a deceased daughter which has passed to her heirs the sons should have the right to pay those heirs the sum which the will stated should have been paid to that daughter had she lived. The primary intent of the testator having been ascertained from the will as a whole the language used in any particular paragraph must, if inconsistent with that intent, be made to bend to it.

“In case of doubt a will should be construed in favor of a general or primary intention rather than a particular or secondary one; and where in *a* such a case a particular intention, or particular terms, as expressed in some part of the will, are inconsistent with and repugnant to the testator’s general intention as ascertained from all the provisions of the will, the general intention must prevail.” 40 Cyc. 1393. The general rule, which, it is [87] conceded, is well settled, that a condition precedent must be literally performed, should not be enforced in the case of a will when the intent of the testator would thereby be defeated. The general and primary intent was that the sons, or one or more of them, should have the whole land; the language used with reference to the condition upon which they should acquire it was the expression of a secondary and particular intent. The means was secondary to the end, and should yield or conform to it. To hold otherwise, it seems to me, is to sacrifice the substance to the shadow upon a narrow and technical view. This is not a case where the literal performance of a condition has become impossible. The condition precedent prescribed in the third paragraph of the will could be liberally performed, and as the agreed facts show, has been performed, notwithstanding the death of one of the daughters, by making the payments to the surviving daughters. Properly construed, however, the condition precedent which the testator imposed to the acquisition by the sons of the estates given to the daughters was not that they should make payment

to the surviving daughters only, but that they should pay the sum named for the interest given to each of the daughters and their heirs. The right to acquire the interests of the daughters was not, I think, a mere personal privilege which could not be assigned to and exercised by a vendee of the sons. In my opinion the judgment should be that the plaintiffs are seised in fee of an undivided one-ninth of the land subject to the right of the defendant to acquire the same by the payment of \$5,000.

(Signed) A. G. M. ROBERTSON. [88]

[Endorsed]: No. 927. Supreme Court, Territory of Hawaii. October Term, 1915. Walter W. Scott, A Minor, Janet M. Scott, a Minor, Rubena F. Scott, a Minor, and the Bishop Trust Company, Ltd., a Corporation, Guardian of the Estate of Said Walter W. Scott, Janet M. Scott and Rubena F. Scott, Minors, vs. Mary N. Lucas. Opinion. Filed June 13, 1916, at 1:30 P. M. (S) J. A. Thompson, Clerk. [89]

In the Supreme Court of the Territory of Hawaii.

October Term, 1915.

BEFORE THE JUSTICE OF SAID COURT.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LTD., a Corporation, Guardian of the Estate of said WALTER W. SCOTT, JANET M. SCOTT and RUBENA F. SCOTT, Minors,
Plaintiffs,

vs.

MARY N. LUCAS,

Defendant.

Judgment.

SUBMISSION ON CASE AGREED.

This cause having been submitted to this court upon agreed facts, under the statute, to obtain a decree quieting title to an undivided one-ninth interest in and to certain lands described in the submission of facts filed in said cause and this court having heretofore, to wit, on the 13th day of June, 1916, rendered and filed a decision in said cause that the defendant has no right, title or interest in or to said undivided one-ninth interest and that the plaintiffs, Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, are the absolute owners in fee simple of said one-ninth interest:

Now it is ordered, adjudged and decreed that the plaintiffs, Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, are the absolute owners as tenants in common in fee simple of an undivided

one-ninth share or interest of or in those certain lands, tenements and [90] hereditaments situated on the Island and County of Kauai, Territory of Hawaii mentioned, described and set forth in the schedule attached to the submission filed herein as Exhibit "A" thereto, that is to say:

All of the following tracts and parcels of land and other property situated on the Island of Kauai, to wit:

1. The Ahupuaa of Kahili containing an area of 1789 acres more or less; being the same premises described in Royal Patent — Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Henry Bertelmann, late of Pilaa, Kauai, now deceased, by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86, folios 220...

2. The Ahupuaa of West Waiakalua containing an area of 332 40/100 acres more or less, being premises also conveyed to said Christian Henry Bertelmann by said deed.

3. The Ahupuaa of Pilaa containing an area of 1520 acres more or less; being the same premises described in Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Henry Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5, 1878, of record in the Hawaiian Registry of Deeds in Liber 53, folio 284.

4. All of that tract of land situated at Lepeuli, District of Koolau, Kauai, containing

an area of 102 acres more or less; being the same premises conveyed to said Christian Henry Bertelmann by deed of Wm. Worner, dated March 31, 1883, of record in the Hawaiian Registry of Deeds in Liber 79, folio 386, 387.

5. Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

6. All kuleanas belonging to the said Christian Henry Bertelmann situated within or adjacent to the boundaries of any of the above-described premises and all other parcels and tracts of land upon the Island of Kauai owned by the said Christian Henry Bertelmann at the time of his death.

7. All streams of water and water rights upon or appurtenant to all and singular the above-mentioned premises.

8. All leases of any portion of said premises made by Christian Henry Bertelmann together with all rents, remainders and reversions of the same;

and that the defendant, Mary N. Lucas, has no right, title or interest in or to the said undivided one-ninth share or interest of or in said [91] lands and that the title of the plaintiffs thereto to the extent aforesaid be quieted as against the defendant.

Dated, Honolulu, T. H., July 25, A. D. 1916.

[Seal] (Signed) J. A. THOMPSON,
Clerk.

By the Court,

Approved:

(Signed) E. M. WATSON,
Associate Justice Supreme Court, Territory of
Hawaii. [92]

[Endorsed]: No. 927. In the Supreme Court of the Territory of Hawaii. October Term, 1915. Before the Justices of said Court. Walter W. Scott, a Minor, Janet M. Scott, a Minor, Rubena F. Scott, a Minor, and the Bishop Trust Company, Ltd., a corporation, Guardian of the Estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, Minors, Plaintiffs, vs. Mary N. Lucas, Defendant. Submission on Case Agreed. Judgment. Filed July 25, 1916, at 10:58 A. M. J. A. Thompson, Clerk. [93]

In the Supreme Court of the Territory of Hawaii.

October Term, 1915.

BEFORE THE JUSTICE OF SAID COURT.

MARY N. LUCAS,

Defendant, Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LTD., a Corporation, Guardian of the Estate of said WALTER W. SCOTT, JANET M. SCOTT and RUBENA F. SCOTT, Minors, Plaintiffs, Defendants in Error.

Petition for Writ of Error and Supersedeas.

The above-named defendant, Mary N. Lucas, deeming herself aggrieved by the judgment of the Honorable the Supreme Court of the Territory of Hawaii entered and filed in said Supreme Court on

July 25,

or about ~~June 13~~, 1916, in a cause entitled

(S) J. A. T. Clerk. “Walter W. Scott, a minor, Janet M. Scott,

a minor, Rubena F. Scott, a minor, and the

Bishop Trust Company, Limited, a Corporation,

Guardian of the Estate of said Walter W. Scott,

Janet M. Scott and Rubena F. Scott, minors, Plain-

tiffs” (defendants in error herein), “vs. Mary N.

Lucas, defendant” (plaintiff in error herein), num-

bered and docketed in said court as No. 927, comes

now by Antonio Perry, her attorney, and hereby

humbly petitions said Supreme Court of the Terri-

tory of Hawaii for an order allowing said Mary N.

Lucas to prosecute a writ of error and have the same

allowed and issued from the United States Circuit

Court of Appeals for the Ninth Circuit to the said

Supreme Court of the Territory of Hawaii [94]

under and according to the laws of the United States

in that behalf made and provided, and that a tran-

script of the record, proceedings and documentary

exhibits upon which said judgment was made, duly

authenticated, may be sent to said United States Cir-

cuit Court of Appeals for the Ninth Circuit; and also

that an order may be made by this Honorable Court

fixing the amount of the bond which the said defend-

ant shall give and furnish upon said writ of error,

and ordering that upon the filing of such bond all proceedings relative to enforcement and execution of the judgment aforesaid and all other proceedings whatsoever in said cause in the Supreme Court of the Territory of Hawaii be suspended and stayed until the determination of said writ of error by the Honorable the United States Circuit Court of Appeals for the Ninth Circuit.

And in this behalf your petitioner, the said Mary N. Lucas, shows that the said judgment was rendered in an action at law and that the amount involved, exclusive of costs, exceeds the value of five thousand (\$5,000) dollars.

Dated at Honolulu, Territory of Hawaii, this 25th day of July, 1916.

MARY N. LUCAS,
By Her Attorney,
(Sgd.) ANTONIO PERRY.

Affidavit of Antonio Perry.

City and County of Honolulu,
Territory of Hawaii,
United States of America,—ss.

Antonio Perry, being first duly sworn, on oath deposes and [95] says: That he is the attorney for the above-named petitioner, Mary N. Lucas; that he has read the foregoing petition and knows its contents and that the matters and things therein set forth are true of his own knowledge; and, further, that the amount involved in the cause aforesaid, exclusive of costs, exceeds the value of five thousand (\$5,000) dollars.

(Sgd.) ANTONIO PERRY.

Subscribed and sworn to before me this 25th day of July, 1916.

[Seal] (S) SHIRLEY B. FOSTER,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [96]

[Endorsed]: No. 927. Supreme Court Territory of Hawaii. October Term, 1915. Before the Justices. Mary N. Lucas, Defendant, Plaintiff in Error, vs. Walter W. Scott, et al., Plaintiffs, Defendants in Error. Petition for Writ of Error and Superseedeas. Filed July 25, 1916, at 11:45 A. M. (S) J. A. Thompson, Clerk. [97]

In the Supreme Court of the Territory of Hawaii.
October Term, 1915.

BEFORE THE JUSTICE OF SAID COURT.
MARY N. LUCAS,
Defendant, Plaintiff in Error,
vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LTD., a Corporation, Guardian of the Estate of said WALTER W. SCOTT, JANET M. SCOTT and RUBENA F. SCOTT, Minors,
Plaintiffs, Defendants in Error.

Assignment of Errors.

And now comes Mary N. Lucas, the defendant, plaintiff in error in the above-entitled cause, by Antonio Perry, her attorney, and says that in the record and proceedings in the above-entitled cause in the

Supreme Court of the Territory of Hawaii there is manifest error to the prejudice of said defendant, plaintiff in error, Mary N. Lucas, in this, to wit:

1. That, in the cause entitled “Walter W. Scott, a minor, Janet M. Scott, a minor, Rubena F. Scott, a minor, and the Bishop Trust Company, Limited, a corporation, Guardian of the Estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, plaintiffs, vs. Mary N. Lucas, defendant,” and numbered and docketed in the Supreme Court of the Territory of Hawaii as No. 927, the said Supreme Court of the Territory of Hawaii erred in rendering and entering judgment for the said plaintiffs, now defendants in error herein, and against [98] the said defendant, now plaintiff in error herein, which said judgment was filed in said cause on or about July 25, 1916, decreeing and adjudging that “the plaintiffs, Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, are the absolute owners as tenants in common in fee simple of an undivided one-ninth share or interest of or in those certain lands, tenements and hereditaments situated on the Island and County of Kauai, Territory of Hawaii mentioned, described and set forth in the schedule attached to the submission filed herein as Exhibit “A” thereto, that is to say:

All of the following tracts and parcels of land and other property situated on the Island of Kauai, to wit:

1. The Ahuquaa of Kahili containing an area of 1789 acres more or less; being the same premises described in Royal Patent — Land Com-

mission Award 8559B to W. C. Lunalilo, and conveyed to Christian Henry Bertelmann, late of Pilaa, Kauai, now deceased, by deed of A. S. Hartwell et al., Trustees, dated September 24, 1883, of record in the Hawaiian Registry of Deeds in Liber 86 folio 220.

2. The Ahupuaa of West Waiakalua containing an area of 332 40/100 acres more or less, being premises also conveyed to said Christian Henry Bertelmann by said deed.

3. The Ahupuaa of Pilaa containing an area of 1520 acres more or less; being the same premises described in Land Commission Award 8559B to W. C. Lunalilo, and conveyed to Christian Henry Bertelmann by deed of J. Mott-Smith et al., Trustees, dated February 5, 1878, of record in the Hawaiian Registry of Deeds in Liber 53, folio 284.

4. All of that tract of land situated at Lepeuli, District of Koolau, Kauai, containing an area of 102 acres more or less; being the same premises conveyed to said Christian Henry Bertelmann by deed of Wm. Worner, dated March 31, 1883, of record in the Hawaiian Registry of Deeds in Liber 79, folio 386-387.

5. Five undivided shares or parts of and in all of the land at said Kauai owned by the Moloaa Hui, and all privileges and benefits appertaining to the same.

6. All kuleanas belonging to the said Christian Henry Bertelmann situated within or adjacent to the boundaries of any of the above-

described premises and all other parcels and tracts of land upon the Island of Kauai owned by the said Christian Henry Bertelmann at the time of his death.

7. All streams of water and water rights upon or appurtenant to all and singular the above-mentioned premises. [99]

8. All leases of any portion of said premises made by Christian Henry Bertelmann together with all rents, remainders and reversions of the same:

and that the defendant, Mary N. Lucas, has no right, title or interest in or to the said undivided one-ninth share or interest of or in said lands and that the title of the plaintiffs thereto to the extent aforesaid be quieted as against the defendant," the said Mary N. Lucas.

2. That the said Supreme Court erred in holding that the said Mary N. Lucas does not own and has no right, title or interest in or to the undivided one-ninth interest in the lands referred to in the paragraph or article marked "Third" in the will of Christian Henry Bertelmann (which said will is set forth in the Agreed Statement of Facts or Submission in said cause and proceedings, No. 927 as aforesaid, and was and is the subject of construction in said cause and proceedings), and which said lands are mentioned and described in the said Agreed Statement of Facts or Submission joined in and filed by the parties plaintiffs and defendant in said Supreme Court in the cause aforesaid (No. 927) and which said one-ninth interest was and is in said cause and

proceedings claimed by the said plaintiffs, now defendants in error, as the heirs of Catherine Haunani Scott, the daughter of the said testator, Christian Henry Bertelmann, and the mother of said Walter W. Scott, Janet M. Scott and Rubena F. Scott.

3. That the said Supreme Court erred in rendering and in entering judgment for the said plaintiffs (now defendants in error) and against the said defendant (now plaintiff in error) decreeing and adjudging that the said plaintiffs are the absolute owners in fee of the undivided one-ninth interest in said lands, which said one-ninth interest and lands are referred to and described in paragraphs marked "1" and "2" hereinabove.

4. That the said Supreme Court erred in holding that the said plaintiffs are the absolute owners in fee of the undivided one-ninth interest in said lands, which said one-ninth interest and lands [100] are referred to and described in paragraphs marked "1" and "2" hereinabove.

5. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that the said plaintiffs, now defendants in error, are the absolute owners in fee of the said one-ninth interest in certain lands, which said interest and lands are in paragraphs marked "1" and "2" hereinabove referred to and described, and that said plaintiffs' said one-ninth interest is not defeasible and cannot be acquired by the defendant, this plaintiff in error, upon and by payment by her, said defendant, to them, said plaintiffs, of the sum of five thousand (\$5,000) dollars within one year from and

after the expiration of the 25-years' lease referred to in Article "Third" and in other parts of the will of said Christian Henry Bertelmann, that is to say, within one year from and after November 1, 1915.

6. That the said Supreme Court of the Territory of Hawaii erred in holding and in entering judgment upon the theory and to the effect that the said plaintiffs (now defendants in error) have any right, title or interest in or to the lands referred to in the paragraph or article marked "Third" in the said will of Christian Henry Bertelmann.

7. That the said Supreme Court erred in holding and in entering judgment to the effect that the said defendant, Mary N. Lucas, plaintiff in error herein, has not the right to defeat the said alleged one-ninth interest of the said plaintiffs, nor defendants in error, and to acquire it for herself, said Mary N. Lucas, by and upon paying to them the sum of five thousand (\$5,000) dollars within one year from and after the expiration of the said twenty-five years' lease referred to in the paragraph or Article marked "Third" and in other parts of the will of the said Christian Henry Bertelmann.

8. That the said Supreme Court erred in holding that "where by a last will and testament a remainder in fee is vested in a devisee [101] subject to defeasance by a condition subsequent and prior to the performance of the condition such condition becomes impossible of performance, the vested remainder becomes absolute in the devisee and no longer subject to the defeasance provided for in the will" and in holding that the rule so announced and herein just

quoted has any application to the will of Christian Henry Bertelmann or to the facts of the case at bar.

9. That the said Supreme Court erred in holding, and in entering judgment upon the theory and to the effect, that under the will of the said Christian Henry Bertelmann, Catherine Haunani Scott, the mother of the plaintiffs, Walter, Janet and Rubena Scott, took a vested remainder in fee subject to be defeated by the payment to her by the sons of the said testator, Christian Henry Bertelman, or one or more of them, of the sum of five thousand (\$5,000) dollars within one year after the expiration of the lease and in failing to hold and enter judgment upon the theory and to the effect that the mother of the said plaintiffs was devised by the said will a contingent estate upon the conditions precedent that she survive the expiration of said 25-year lease and that the sons of the said testator, or one or more of them, should not pay to her the sum of five thousand (\$5,000) dollars within one year after the expiration of the 25-year lease in the said will mentioned.

10. That the said Supreme Court erred in holding that it was not at liberty to disturb the decision of the Supreme Court of the Territory of Hawaii reported in 14 Haw. 378, rendered July 29, 1902, in the case of Frank C. Bertelmann and another versus Susan Bertelmann Kahilina and others, in which said case neither the plaintiffs herein nor Catherine Haunani Scott, mother of the minor plaintiffs herein nor this plaintiff in error nor Christian Sylvester Bertelmann, one of the said testator's sons, nor

Beatrice, one of the said testator's [102] daughters, were parties.

11. That the said Supreme Court erred in holding that the said decision of the said Supreme Court of the Territory of Hawaii so rendered in the said case entitled Frank C. Bertelmann and another versus Susan Bertelmann Kahilina and others has become an established rule of property so far as the rights involved in the case at bar are concerned or at all.

12. That the said Supreme Court erred in holding that under the said will of the said Christian Henry Bertelmann a vested remainder was devised to the daughters and that the defeasance of said vested remainder depended upon a condition subsequent.

13. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that the death of Mrs. Scott (Catherine Huanani Scott, daughter of the said testator), mother of the minor plaintiffs, defendants in error herein, prior to the termination of the 25-year lease aforesaid referred to in Article "Third" of the said will of said testator, rendered the condition subsequent, whereby the estate held by the court to have been vested in her (Mrs. Scott) could have been, but for her death at that time, divested, impossible of performance.

14. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that the condition in Article "Third" of the said will of the said testator relating to the payment of five thousand (\$5,000) dollars by the son or sons required for its performance a payment to the

testator's daughter Catherine Haunani Scott personally and in her lifetime and that a payment, in all other respects valid and sufficient, to the children and heirs of Catherine Haunani Scott after her death, she having died prior to the termination of the 25-year lease in said will mentioned, could not be [103] and would not be a performance of the said condition or a compliance with its terms so as to defeat or to prevent the vesting of the one-ninth interest or any other right, title or interest in the children and heirs of the said Catherine Haunani Scott.

15. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that the minor plaintiffs aforesaid inherited from their mother the estate in the lands in controversy vested in her by the will of her father, the said Christian Henry Bertelmann, freed from the alleged condition subsequent whereby the said estate so vested in their mother could be divested if their mother were now living.

16. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that neither the testator's sons nor any of them nor *any their* assignee can now defeat the estate which was devised to the mother of the said minor plaintiffs in her lifetime under the provisions of the will aforesaid and which estate, the said Supreme Court says, descended to and vested in the plaintiffs.

17. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that the will aforesaid of the said

Christian Henry Bertelmann shows clearly a manifest intent on the part of the said testator that his three sons and six daughters should share equally.

18. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that the right or privilege by the said will granted to the sons of the testator, and to one or more of them, to defeat the interests of the daughters of the testator by paying to each of the daughters within the time in the said will stated the sum of five thousand (\$5000) dollars and thereby to acquire for themselves, the said sons so paying, in fee simple absolute all of the lands mentioned in article "Third" of said [104] will "seems personal" and that no intention can be found in the will that the daughters should be obliged to sell their respective interests in the lands in question at the stated price of five thousand (\$5000) dollars to anyone other than the sons or one or more of them.

19. That the said Supreme Court erred in not holding and in failing to enter judgment upon the theory and to the effect that upon the facts stated in the Submission of Case Agreed, the same being the initial pleading in the aforesaid cause, No. 927, of Walter W. Scott and others above mentioned as plaintiffs, versus Mary N. Lucas as defendant, the said Mary N. Lucas is, as against the said plaintiffs and without making any payment of five thousand (\$5000) dollars to the said Catherine Haunani Scott or to the minor plaintiffs aforesaid as heirs of the said Catherine Haunani Scott, the sole and "undisputable" owner, i. e., the owner in fee simple abso-

lute, of all of the lands referred to in Article “Third” of the will aforesaid and of every interest in said lands, and the owner in fee simple absolute of all of the right, title and interest (S) A. P. which was devised to the said Catherine J. A. T. Haunani Scott under the will aforesaid ~~from~~ Clerk. of the said testator.

20. That the said Supreme Court erred in not holding and in not entering judgment upon the theory and to the effect that the minor plaintiffs aforesaid and their guardian have now no right, title or interest whatsoever in the lands referred to in said Article “Third” of the will aforesaid and no right, title or interest whatsoever in or to any payment to them of five thousand (\$5000) dollars or of any other sum by the testator’s three sons or any of them or by the said Mary N. Lucas, the assignee of the said sons of the testator.

21. That the said Supreme Court erred in not holding and in not entering judgment upon the theory and to the effect that even if the said minor plaintiffs inherited from their mother and have now an undivided one-ninth interest in the said lands referred to in [105] Article “Third” of said will, nevertheless, the said Mary N. Lucas can defeat all of their said one-ninth interest and all other, if any, their right, title and interest in the said lands acquired under said will by paying to them or to their legally authorized representatives the sum of five thousand (\$5000) dollars within the time prescribed in and by said Article “Third” of said will and that if the said Mary N. Lucas shall so pay to said minor

plaintiffs or to their legally authorized representatives said sum of five thousand (\$5000) dollars within the time aforesaid the said Mary N. Lucas can and will acquire for herself all of the right, title and interest of the said minor plaintiffs, originally held by said Catherine Haunani Scott under said will, in the lands referred to in said Article "Third" of said will, and can and will thereby, as against the plaintiffs aforesaid, render her title perfect to all of said lands in fee simple absolute.

22. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that the words of survivorship in the phrase "surviving daughters," wherever it occurs in Article "Third" of said will, refer to the death of the said testator and not to the expiration of the said 25-year lease.

23. That the said Supreme Court erred in not holding and in not entering judgment upon the theory and to the effect that the words of survivorship in the phrase "surviving daughters," wherever it occurs in Article "Third" of said will, refer to the expiration of the 25-year least in said article mentioned and do not refer to the death of said testator.

24. That the said Supreme Court erred in holding and in entering judgment upon the theory and to the effect that Catherine Haunani Scott was under the circumstances of the case one of the "surviving daughters" of the said testator within the meaning of that expression [106] as used in Article "Third" of said will.

25. That the said Supreme Court erred in not holding and in not entering judgment upon the theory and to the effect that Catherine Haunani Scott was not under the circumstances of the case one of the “surviving daughters” of the testator within the meaning of that expression as used in Article “Third” of said will.

26. That the said Supreme Court erred in not holding and in not entering judgment upon the theory and to the effect that the condition imposed upon the sons under Article “Third” of the said will relating to the payment of five thousand (\$5000) dollars to each of the daughters in order that the sons might thereby become the “undisputable” owners of all of the lands mentioned in said Article “Third,” was and is, as to any interest devised to Catherine Haunani Scott, possible of performance in spite of the fact that the said Catherine Haunani Scott died before the expiration of the said 25-year lease.

27. That the said Supreme Court erred in not holding and in not entering judgment upon the theory and to the effect that the interests of the sons of the testator, and each of them, under the said will and particularly under Article “Third” thereof, in and to the lands referred to in said Article “Third” were wholly assignable.

28. That the said Supreme Court erred in not holding and in not entering judgment upon the theory and to the effect that the right or privilege of the sons of the testator, and each of them, to defeat, and to acquire for themselves, the interests of

the daughters of the testator and particularly the interest of Catherine Haunani Scott, in the lands referred to in Article "Third" of said will by paying the sum of five thousand (\$5000) dollars at the time and upon the other conditions in said Article "Third" mentioned, was assignable and could and can be exercised by the said Mary N. Lucas, the assignee [107] of the three sons of the said testator.

29. That the said Supreme Court erred in not holding and in not entering judgment upon the theory and to the effect that the right and privilege of the sons of the testator and each of them to defeat, and to acquire for themselves, the interest of the testator's daughter, Catherine Haunani Scott, and of her heirs after her by way of succession to her, by paying the sum of five thousand (\$5000) dollars to the said Catherine Haunani Scott or to her heirs within the time and upon the other conditions in said Article "Third" of said will mentioned, was assignable and could and can be exercised by the said Mary N. Lucas, the assignee of the three sons of the said testator.

WHEREFORE, the said Mary N. Lucas, plaintiff in error, prays that the judgment of said Supreme Court of the Territory of Hawaii be reversed and set aside and that the said Supreme Court of the Territory of Hawaii be ordered to enter judgment for and in favor of the said Mary N. Lucas, defendant and plaintiff in error, declaring that, as against the said plaintiffs, defendants in error herein, she is the sole owner, in fee simple absolute, of all of

the lands referred to in Article "Third" of the will of said Christian Henry Bertelmann, and that the said plaintiffs have no right, title or interest whatsoever in said lands or any of them, and in the alternative declaring, if the United States Circuit Court of Appeals for the Ninth Circuit shall hold that the said minor plaintiffs are now the owners of an undivided one-ninth interest in the said lands, that the said one-ninth interest so held by the said minor plaintiffs is subject to be defeated wholly and to be acquired by the said Mary N. Lucas upon her paying or tendering the sum of five thousand (\$5000) dollars to the said minor plaintiffs or to their legally [108] authorized representatives within one year from the expiration of the 25-year lease in the said will mentioned.

Dated, Honolulu, Territory of Hawaii, July 25, 1916.

MARY N. LUCAS,

By Her Attorney,

(Sgd.) ANTONIO PERRY. [109]

[Endorsed] No. 927. Supreme Court, Territory of Hawaii. October Term, 1915. Before the Justices. Mary N. Lucas, Defendant, Plaintiff in Error, vs. Walter W. Scott et al., Plaintiffs, Defendants in Error. Assignment of Errors. Filed July 25, 1916, at 11:45 A. M. (S.) J. A. Thompson, Clerk. [110]

In the Supreme Court of the Territory of Hawaii.
October Term, 1915.

BEFORE THE JUSTICES OF SAID COURT.

MARY N. LUCAS,

Defendant, Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LIMITED, a Corporation, Guardian of the Estate of said WALTER W. SCOTT, JANET M. SCOTT and RUBENA F. SCOTT, Minors,

Plaintiffs, Defendants in Error.

Supersedeas and Cost Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, Mary N. Lucas, of Honolulu, Oahu, Territory of Hawaii, as principal, and John F. Bowler and Samuel C. Dwight, both of said Honolulu, as sureties, are jointly and severally held and firmly bound unto Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, and the Bishop Trust Company, Limited, a Corporation, guardian of the estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, in the full and just sum of Five Hundred (\$500.00) dollars, to the payment whereof well and truly to be made unto the said Walter W. Scott, Janet M. Scott, Rubena F. Scott, and the Bishop Trust Company, Limited, a Corporation, Guardian of the estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, or their

executors, administrators, successors or assigns, we hereby jointly and severally bind ourselves and our heirs, executors and administrators firmly by these presents. [111].

The condition of this obligation is as follows:

WHEREAS, in the above-entitled cause, a petition has been filed for the allowance of a writ of error to have the judgment of the Supreme Court of the Territory of Hawaii, entered and filed in the above-entitled court and cause on or about July 25, 1916, and the proceedings in said cause prior thereto, reviewed by the United States Circuit Court of Appeals for the Ninth Circuit and to have issued a supersedeas herein:

NOW, THEREFORE, if such writ of error and supersedeas shall issue according to the prayer of the petition in that behalf and if the said Mary N. Lucas, the above-bounden principal and plaintiff in error, shall prosecute said writ of error to effect and answer all damages and costs, if she fails to make her plea good, then this obligation shall be void,—otherwise the same shall be and remain in full force and virtue.

IN WITNESS WHEREOF we, the said Mary N. Lucas, and John F. Bowler and Samuel C. Dwight hereunto set our hands and seals this 25th day of July, 1916.

(Sgd.) MARY N. LUCAS,
Principal.

(Sgd.) JOHN F. BOWLER,
Surety.

(Sgd.) SAMUEL C. DWIGHT,
Surety.

City and County of Honolulu,
Territory of Hawaii,—ss.

John F. Bowler and Samuel C. Dwight [112]
the above-named sureties, being first duly sworn, do
on oath depose and say, each for himself, that he is
a resident of Honolulu, Oahu, Territory of Hawaii,
and that he owns property located in said Honolulu,
not exempt from execution, which property is of the
value, over and above all of his debts and liabilities,
of twice the amount of the foregoing bond.

(Sgd.) JOHN F. BOWLER.

(Sgd.) SAMUEL C. DWIGHT.

Subscribed and sworn to before me this 25th day
of July, 1916.

[Seal] (Sgd.) SHIRLEY B. FOSTER,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

The foregoing bond is hereby approved, as to its
form, as to its amount and as to the sufficiency of its
sureties, this 25th day of July, 1916.

(Signed) E. A. MOTT-SMITH,
Attorney for the Plaintiffs, Defendants in Error.

The foregoing bond is hereby approved, as to its
form, as to its amount and as to the sufficiency of its
sureties, this 25th day of July, 1916.

[Seal] (Signed) A. G. M. ROBERTSON,
Chief Justice, Supreme Court, Territory of Hawaii.

[113]

[Endorsed]: No. 927. Supreme Court, Territory
of Hawaii. October Term, 1915. Before the Jus-
tices. Mary N. Lucas, Defendant, Plaintiff in Er-

ror, vs. Walter W. Scott et al., Plaintiffs, Defendants in Error. Supersedeas and Cost Bond on Writ of Error. Filed July 25, 1916, at 11:45 A. M. (S.) J. A. Thompson, Clerk. [114]

In the Supreme Court of the Territory of Hawaii.
October Term, 1915.

BEFORE THE JUSTICES OF SAID COURT.

MARY N. LUCAS,

Defendant, Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LIMITED, a Corporation, Guardian of the Estate of said WALTER W. SCOTT, JANET M. SCOTT and RUBENA F. SCOTT, Minors,

Plaintiffs, Defendants in Error.

Order Allowing Writ of Error and Supersedeas.

Upon reading and filing the foregoing petition for a writ of error, together with an assignment, presented therewith, of errors alleged to have occurred in the judgment of the Supreme Court of the Territory of Hawaii and in the proceedings in the trial of said cause prior thereto, IT IS ORDERED that a writ of error be and the same is hereby allowed to the said Mary N. Lucas, to have reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered in the above-entitled cause on or about July 25, 1916,

and the proceedings in the trial of said cause prior thereto, and that the amount of the bond to be filed in this court by the said Mary N. Lucas in connection with the writ of error prayed for, be and the same is hereby fixed at Five Hundred (\$500.00) dollars; and IT IS FURTHER ORDERED that, upon the filing of an approved bond in said amount, all proceedings relative to enforcement and execution of the judgment aforesaid and all other [115] proceedings whatsoever in said cause in the said Supreme Court of the Territory of Hawaii shall be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Honolulu, T. H., July 25, 1916.

[Seal] (Signed) A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii.

An approved bond in the sum of Five Hundred (\$500.00) dollars, complying with the requirements hereinabove fixed and with the law, having been filed this 25th day of July, 1916, IT IS HEREBY ORDERED that all proceedings relative to enforcement and execution of the judgment hereinabove referred to and all other proceedings whatsoever in said cause in said Supreme Court of Hawaii be and they hereby are suspended and stayed until the determination of the aforesaid writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Honolulu, T. H., July 25, 1916.

[Seal] (Signed) A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii. [116]

[Endorsed]: No. 927. Supreme Court, Territory of Hawaii. October Term, 1915. Before the Justices. Mary N. Lucas, Defendant, Plaintiff in Error, vs. Walter W. Scott et al., Plaintiffs, Defendants in Error. Order Allowing Writ of Error and Supersedeas. Filed July 25, 1916, at 11:45 A. M. (S.) J. A. Thompson, Clerk. [117]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable the Justices of the Supreme Court of the Territory of Hawaii, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the supreme Court of the Territory of Hawaii, before you or some of you, between Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, and the Bishop Trust Company, Limited, a corporation, guardian of the estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, plaintiffs (defendants in error herein), and Mary N. Lucas, defendant (plaintiff in error herein), (Docket No. 927 of the Supreme Court of the Territory of Hawaii), a manifest error has happened, to the great damage of the said Mary N. Lucas, as is said and appears by the complaint: We, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, DO COMMAND YOU, if judgment be therein given, that then, under your

seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the court-rooms of said court in the City of San Francisco, State of California, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 23d day of August next, that the record and proceedings aforesaid being inspected, the said justices of the said Circuit Court of Appeals may cause further to be done therein, to correct [118] that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 25th day of July, in the year of our Lord One Thousand Nine Hundred and Sixteen and of the Independence of the United States the One Hundred and Forty-first.

[Seal] (Signed) J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii.

The foregoing writ is hereby allowed, this 25th day of July, 1916.

[Seal] (Signed) A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii. [119]

[Endorsed]: No. 927. Mary N. Lucas, Defendant, Plaintiff in Error, v. Walter W. Scott, et al., Plaintiffs, Defendants in Error. Writ of Error. Filed July 25, 1916, at 11:45 A. M. (S.) J. A. Thompson, Clerk. [120]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss
To Walter W. Scott, Janet M. Scott and Rubena F. Scott, Minors, and the Bishop Trust Company, Limited, a Corporation, Guardian of the Estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, Minors, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within thirty days after the date of this citation, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Territory of Hawaii, wherein Mary N. Lucas is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, Mary N. Lucas, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 25th day of July, 1916.

[Seal] (Signed) A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory of Hawaii.

Due and proper service of the above citation and receipt [121] of a true copy thereof this 25th day

of July, 1916, is hereby admitted.

WALTER W. SCOTT, a Minor,
JANET F. SCOTT, a Minor,
RUBENA F. SCOTT, a Minor, and
The BISHOP TRUST COMPANY, LIM-
ITED, a Corporation,
Guardian of the Estate of said Walter W. Scott,
Janet M. Scott and Rubena F. Scott, Minors,
By Their Attorney,
(Signed) E. A. MOTT-SMITH. [122]

[Endorsed]: No. 927. Mary N. Lucas, Plaintiff
in Error, v. Walter W. Scott et al., Defendants in
Error. Citation on Writ of Error. Filed July 25,
1916 at 11:45 A. M. (S.) J. A. Thompson, Clerk.

Issued for service July 25, 1916, at 11:45 A. M.
(S.) J. A. Thompson, Clerk.

Returned July 31, 1916, at 9:50 A. M. (S.) J. A.
Thompson, Clerk. [123]

In the Supreme Court of the Territory of Hawaii.
October Term, 1915.

BEFORE THE JUSTICES OF SAID COURT.

MARY N. LUCAS,

Defendant, Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M.
SCOTT, a Minor, RUBENA F. SCOTT, a
Minor, and the BISHOP TRUST COM-
PANY, LIMITED, a Corporation, Guardian

of the Estate of said WALTER W. SCOTT,
JANET M. SCOTT and RUBENA F.
SCOTT, Minors,

Plaintiffs, Defendants in Error.

Direction for Service.

United States of America,

Territory of Hawaii,—ss.

To the High Sheriff of the Territory of Hawaii or
His Deputy; the Sheriff of the City and County
of Honolulu or His Deputy; the Sheriff of the
County of Kauai or His Deputy:

You are commanded to serve upon Walter W.
Scott, Janet M. Scott and Rubena F. Scott, minors,
and the Bishop Trust Company, Limited, Guardian
of the estate of said Walter W. Scott, Janet M. Scott
and Rubena F. Scott, minors, the Writ of Error and
Citation on Error in the above-entitled cause and
each and all of the other papers hereinbelow enu-
merated, to wit: [124]

Petition for Writ of Error and Supersedeas, with
affidavit of Antonio Perry;

Assignment of Errors;

Order Allowing Writ or Error and Supersedeas;

Supersedeas and Cost Bond on Writ of Error;

Order Extending Time for Preparation and Trans-
mission of Record;

Praecipe for Transcript;

~~Certificate of Clerk to Transcript of Record and Re-
turn to Writ of Error,~~

Direction for Service of Writ, Citation and other
papers;

Statement of Errors and Record Relied upon, addressed to the Clerk of United States Circuit Court of Appeals for Ninth Circuit;

Statement of Errors and Record Relied upon, addressed to defendants in error and their attorney.

And to so serve the said papers by delivering to each of the parties hereinabove named copies thereof and at the same time exhibiting the originals.

And make full return of your proceedings hereunder.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 25th day of July, 1916.

[Seal] (Signed) J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of Hawaii.

The foregoing Direction for Service is hereby authorized and allowed this 25th day of July, 1916.

[Seal] (Signed) A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory of Hawaii. [125]

Return of Service of Papers on Writ of Error.

Executed the foregoing Direction for Service and served the following papers as follows:

By delivering a true and attested copy of:

The Writ of Error,

Citation on Error,

Petition for Writ of Error and Supersedeas with Affidavit of Antonio Perry,

Assignment of Errors,

Order Allowing Writ of Error and Superse-
deas,

Supersedeas and Cost Bond on Writ of Error,
Order Extending Time for Preparation and
Transmission of Record,

Praecipe for Transcript,

Direction for Service of Writ, Citation and
other papers,

Statement of Errors and Record Relied upon,
addressed to the Clerk of United States Circuit
Court of Appeals for Ninth Circuit.

Statement of Errors and Record Relied upon,
addressed to defendants in error and their at-
torney,

to each the following persons, to wit:

WALTER W. SCOTT, a minor, at Lihue,
District of Lihue, County of Kauai, T. H.

JANET M. SCOTT, a minor, and

RUBENA F. SCOTT, a minor, at Manini,
District of Kawaihau, County of Kauai, T. H.

and at the time showing them the originals of all of
the said documents, on the 26th day of July, 1916.

Dated, Lihue, T. H., July 26th, 1916.

[Seal] (Signed) WM. HENRY RICE,

Sheriff, County of Kauai, T. H. [126]

Acceptance of Service of Papers on Writ of Error.

Service of the aforesaid Writ of Error, Citation
on Error, and all the other papers by the foregoing
Direction for Service directed to be served, is hereby

admitted and accepted, this 25th day of July, 1916.

WALTER W. SCOTT,
JANET M. SCOTT, and

RUBENA F. SCOTT, Minors and the
BISHOP TRUST COMPANY, LIMITED, A
Corporation, Guardian of the Estate of
said Walter W. Scott, Janet M. Scott and
Rubena F. Scott, Minors,

Defendants in Error,

By Their Attorney,

(Signed) E. A. MOTT-SMITH.

WALTER W. SCOTT,

JANET M. SCOTT, and

RUBENA F. SCOTT,

Minors by the Guardian of their Estate,
The BISHOP TRUST COMPANY, LIMITED,

The Latter by

(Sgd.) E. A. MOTT-SMITH,

Its Vice-President.

And (Sgd.) Wm. SIMPSON,

Its Assistant Treasurer. [127]

[Corporate Seal]

[Endorsed]: No. 927. Supreme Court, Territory of Hawaii. October Term, 1915. Before the Justices. Mary N. Lucas, Defendant, Plaintiff in Error, vs. Walter W. Scott et al., Plaintiffs, Defendants in Error. Direction for Service With Return and Acceptance of Service. Filed and issued July 25, 1916, at 11:45 A. M. (S.) J. A. Thompson, Clerk.

Returned July 31, 1916, at 9:50 A. M.

(Signed) J. A. THOMPSON,

Clerk. [128]

In the Supreme Court of the Territory of Hawaii.

October Term, 1915.

BEFORE THE JUSTICES OF SAID COURT.

MARY N. LUCAS,

Defendant, Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LIMITED, a Corporation, Guardian of the Estate of said WALTER W. SCOTT, JANET M. SCOTT and RUBENA F. SCOTT, Minors,

Plaintiffs, Defendants in Error.

Order Extending Time for Preparation and Transmission of Record.

Upon the application of the plaintiff in error and good cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit, IT IS HEREBY ORDERED that the plaintiff in error, Mary N. Lucas, and the Clerk of this court be and they hereby are allowed until and including the 15th day of September, 1916, within which time to prepare and transmit to the clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record in the above-entitled cause on assignment of errors in this court, together with said assignment of errors and all other papers required as part of said record.

Dated at Honolulu, T. H., July 25, 1916.

[Seal] (Signed) A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii. [129]

This order is consented to July 25, 1916.

(Signed) E. A. MOTT-SMITH,
Attorney for Defendants in Error. [130]

[Endorsed]: No. 927. Supreme Court, Territory
of Hawaii. October Term, 1915. Before the Jus-
tices. Mary N. Lucas, Defendant, Plaintiff in Er-
ror, vs. Walter W. Scott et al., Plaintiffs, Defend-
ants in Error. Order Extending Time for Prepara-
tion and Transmission of Record. Filed July 25,
1916, at 11:45 A. M. (S.) J. A. Thompson, Clerk.
[131]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

ON WRIT OF ERROR TO THE SUPREME
COURT OF THE TERRITORY OF HAWAII.

MARY N. LUCAS,

Defendant and Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M.
SCOTT, a Minor, RUBENA F. SCOTT, a
Minor, and the BISHOP TRUST COM-
PANY, LIMITED, a Corporation, Guardian
of the Estate of said WALTER W. SCOTT,
JANET M. SCOTT and RUBENA F.
SCOTT, Minors,

Plaintiffs and Defendants in Error.

Statement of Errors and Record Relied Upon.

To the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

Mary N. Lucas, the plaintiff in error in the above-entitled cause, hereby states that in the above-entitled cause she intends to rely upon each and all of the errors assigned in the assignment of errors forwarded to this court with the writ of error by the clerk of the Supreme Court of the Territory of Hawaii, a copy of which said assignment of errors is hereto attached and is hereby made a part hereof; and hereby further states that she deems necessary for the consideration in this court of the errors assigned as aforesaid all of the record as certified and forwarded to this court with the original writ of error by the clerk of the Supreme Court aforesaid; [132] and that she will forthwith serve on the adverse parties herein a copy of this statement.

Dated, Honolulu, T. H., July 25, 1916.

MARY N. LUCAS,

By Her Attorney,

(Sgd.) ANTONIO PERRY. [133]

[Endorsed]: No. 927. United States Circuit Court of Appeals, Ninth Circuit. Mary N. Lucas, Defendant and Plaintiff in Error, vs. Walter W. Scott et al., Plaintiffs and Defendants in Error. Statement to Clerk of Above Court, of Errors and Record Relied Upon. Filed July 25, 1916, at 11:45 A. M. (S.) J. A. Thompson, Clerk Supreme Court of Hawaii. [134]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

ON WRIT OF ERROR TO SUPREME COURT
OF THE TERRITORY OF HAWAII.

MARY N. LUCAS,

Defendant and Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M.
SCOTT, a Minor, RUBENA F. SCOTT, a
Minor, and the BISHOP TRUST COM-
PANY, LIMITED, a Corporation, Guardian
of the Estate of said WALTER W. SCOTT,
JANET M. SCOTT and RUBENA F.
SCOTT, Minors,

Plaintiffs and Defendants in Error.

**Notice of Service of Statement of Error and Record
Relied Upon on Writ of Error.**

STATEMENT OF ERRORS AND RECORD
RELIED UPON.

To the Above-mentioned Plaintiffs, Walter W.
Scott, a Minor, Janet M. Scott, a Minor, Rubena
F. Scott, a Minor, and the Bishop Trust Com-
pany, Limited, a Corporation, Guardian of the
Estate of Walter W. Scott, Janet M. Scott and
Rubena F. Scott, Minors, Defendants in Error,
and Their Attorney, E. A. Mott-Smith:

A. P. Herewith I am serving upon you a copy
(S) J. A. T. to be
Clerk, A. P.

of a statement ~~this day~~ forwarded to the
clerk of the above-entitled court for filing in said
court in the above-entitled cause in accordance with

the requirements of Section 8, Rule 23 of the above-entitled court.

Dated, Honolulu, T. H., July 25, 1916.

MARY N. LUCAS,
By Her Attorney,
ANTONIO PERRY. [135]

[Endorsed]: No. 927. United States Circuit Court of Appeals, Ninth Circuit. Mary N. Lucas, Defendant and Plaintiff in Error, vs. Walter W. Scott, et al., Plaintiffs and Defendants in Error. Statement to Defendants in Error of Errors and Record Relied upon. Filed July 25, 1916, at 11:45 A. M. (S) J. A. Thompson, Clerk Supreme Court of Hawaii. [136]

In the Supreme Court of the Territory of Hawaii.
October Term, 1915.

BEFORE THE JUSTICES OF SAID COURT.
MARY N. LUCAS,

Defendant and Plaintiff in Error,
vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LIMITED, a Corporation, Guardian of the Estate of said WALTER W. SCOTT, JANET M. SCOTT and RUBENA F. SCOTT, Minors,
Plaintiffs, Defendants in Error.

Praeipice for Transcript of Record.

To James A. Thompson, Clerk of the Supreme Court,
of the Territory of Hawaii:

You will please prepare a transcript of the record in this cause (said cause being entitled in the Supreme Court of the Territory of Hawaii, “Walter W. Scott, a minor, Janet M. Scott, a minor, Rubena F. Scott, a minor, and the Bishop Trust Company, Limited, a Corporation, Guardian of the Estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, Plaintiffs, vs. Mary N. Lucas, Defendant,”) to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the writ of error heretofore issued by said court and include in said [137] transcript the following pleadings, exhibits, proceedings, opinions, judgments and papers on file in said cause, to wit:

- (1) Copy of Submission upon Agreed Facts, filed February 18, with all the exhibits attached thereto, viz.:

Exhibit “A,” Copy of Schedule of property belonging to Christian Henry Bertelmann, (late of Pilaa, Kauai), at the time of his death.

Exhibit “B,” Copy of the Will of Christian Henry Bertelmann.

Exhibit “C,” Copy of Deed, dated March 5, 1910, by Henry Godfrey Bertelmann to Mary N. Lucas recorded in the Office of the Registrar of Conveyances in Honolulu, Oahu, in Liber 332, pp. 16–18.

Exhibit "D," Copy of Deed, dated September 12, 1907, by Christian Sylvester Bertelmann to Mary N. Lucas, recorded in the office of said Registrar in Liber 292, pp. 498-500.

Exhibit "E," Copy of Mortgage, dated August 3, 1900, by Frank Charles Bertelmann to J. Alfred Magoon, recorded in the office of said Registrar in Liber 213, pp. 222-224, with assignment of mortgage by J. Alfred Magoon to Mary N. Lucas, dated July 11, 1902, and recorded in the office of said Registrar in Liber 213, pp. 223.

Exhibit "F," Copy of Mortgage, dated January 23, 1901, by Frank Charles Bertelmann to S. Kobayashi, recorded in the office of said Registrar in Liber 215, pp. 456-458.

Exhibit "G," Copy of assignment of mortgage, dated August 18, 1902, by S. Kobayashi to D. L. Peterson, recorded in office of said Registrar in Liber 215, p. 457.

Exhibit "H," Copy Assignment of Mortgage, dated August 28, 1902, by D. L. Peterson to Mary N. Lucas, recorded in office of said Registrar in Liber 215, page 457.

Exhibit "I," Copy of Mortgage, dated August 13, 1902, by Frank Charles Bertelmann to Mary N. Lucas, recorded in office of said Registrar in Liber 236, pp. 372-375.

Exhibit "J," Copy of Supreme Court Execution, dated December 16, 1902, for \$87.52, in

a cause entitled "Washington Mercantile Company, Limited, Plaintiff, vs. F. C. Bertelmann, Defendant." [138]

Exhibit "K," Copy of Deed, dated February 7, 1903, by Arthur M. Brown, High Sheriff of the Territory to Mary N. Lucas, recorded in office of said Registrar in Liber 248, pp. 82-84.

Exhibit "L," Copy of Deed, dated March 14, 1903, by Justine Bertelmann Smith to Mary N. Lucas, recorded in office of said Registrar in Liber 248, pp. 190-192.

Exhibit "M," Copy of Deed, dated May 18, 1903, by Mary Josephine Hattie Bertelmann Bannister to Mary N. Lucas, recorded in office of said Registrar in Liber 249, pp. 314-316.

Exhibit "N," Copy of Deed, dated October 12, 1904, by Beatrice Bertelmann Ross to Mary N. Lucas, recorded in office of said Registrar in Liber 258, pp. 427-429.

Exhibit "O," Copy of Deed, dated January 16, 1907, by Angeline K. Hogan to Mary N. Lucas, recorded in office of said Registrar in Liber 287, pp. 154-157, and

Exhibit "P," Copy of Deed, dated November 29, 1915, by Wilhelmina B. Baker to Mary N. Lucas, recorded in office of said Registrar in Liber 435, pp. 330-333.

- (2) Copy of Amendment to Submission, dated and filed April 22, 1916.
- (3) Copy of Opinions of the Justices of the Supreme Court of Hawaii, rendered June 13, 1916.
- (4) Copy of Judgment of the Supreme Court of Hawaii, entered July 25, 1916.
- (5) Copy of Petition for Writ of Error and Supersedeas, together with affidavit of Antonio Perry as to value, filed July 25, 1916.
- (6) Copy of Assignment of Errors, together with prayer for reversal, filed July 25, 1916.
- (7) Copy of Order allowing writ of error and supersedeas, filed July 25, 1916.
- (8) Copy of Supersedeas and Cost Bond on writ of error, filed July 25, 1916.
- (9) Copy of Writ of Error, filed July 25, 1916.
- (10) Copy of Citation on Writ of Error, together with acknowledgment of service thereof, filed July 25, 1916. [139]
- (11) Direction to ~~High~~ Sheriffs for Service of Citation and other papers,—together with ~~High~~
(S) J. A. T. Sheriff's Return of Service, and the acceptance of service.
Clerk.
- (12) Copy of Order Extending Time for Preparation and Transmission of Record.
- (13) Copy of Praecipe for Transcript with receipt attached.

You will further annex to and transmit with the record the original Writ of Error from the United

States Circuit Court of Appeals for the Ninth Circuit, filed July 25, 1916, and the original Citation filed July 25, 1916, with returns of service filed (S) J. A. T. ———— ~~1916~~, your return to the Writ of Error, under the seal of the Supreme Court of the Territory of Hawaii and also your certificate under seal stating in detail the cost of the record and by whom the same was paid.

Dated at Honolulu, T. H., July 25, 1916.

Respectfully,

MARY N. LUCAS,

By Her Attorney,

ANTONIO PERRY. [140]

Acceptance of Service of Praeipe for Transcript of Record.

RECEIVED a copy of the foregoing Praeipe for Transcript this 25th day of July, 1916. The said Praeipe contains a complete, true and correct list of all the pleadings, exhibits, proceedings, opinions, judgments and papers filed in the Supreme Court of the Territory of Hawaii in the above-entitled cause originally brought and maintained in said court under the title of "Walter W. Scott, a minor, Janet M. Scott, a minor, Rubena F. Scott, a minor, and the Bishop Trust Company, Limited, a Corporation, Guardian of the Estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, Plaintiffs, v. Mary N. Lucas, Defendant," and also of all writs, papers and proceedings issued, filed and had in said court under the above title of "Mary N.

Lucas, Defendant and Plaintiff in Error, v. Walter W. Scott, a minor, Janet M. Scott, a minor, Rubena F. Scott, a minor, and the Bishop Trust Company, Limited, a Corporation, Guardian of the Estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, Plaintiffs and Defendants in Error, by way of securing a review by the Circuit Court of Appeals for the Ninth Circuit of the judgment of the Supreme Court of the Territory of Hawaii filed in the cause on or about July 25, 1916, and of the proceedings in the trial of said cause prior thereto. The defendants in error do not desire to have any other papers whatsoever forwarded from the said Supreme Court of the Territory of Hawaii to the United States Circuit Court of Appeals for the Ninth Circuit upon or in connection with said writ of error. The aforesaid list and Praecipe are hereby approved.

Receipt of copies of each and all of the pleadings, exhibits and other papers enumerated in the foregoing Praecipe and thereby directed to be forwarded to the said Circuit Court of Appeals for the Ninth Circuit is hereby further admitted.

Dated, Honolulu, T. H., July 25, 1916.

(Signed) E. A. MOTT-SMITH,

Attorney for the Defendants in Error. [141]

[Endorsed]: No. 927. Supreme Court, Territory of Hawaii. October Term, 1915. Before the Justices. Mary N. Lucas, Defendant, Plaintiff in Error, vs. Walter W. Scott, et al., Plaintiffs, Defendants in Error. Praecipe for Transcript. Filed July 25,

1916, at 1:36 P. M. (Signed) J. A. Thompson, Clerk
Supreme Court. [142]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable the Justices of the Supreme
[Seal] Court of the Territory of Hawaii, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the Territory of Hawaii, before you or some of you, between Walter W. Scott, Janet M. Scott, and Rubena F. Scott, minors, and the Bishop Trust Company, Limited, a corporation, guardian of the estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, minors, plaintiffs (defendants in error herein), and Mary N. Lucas, defendant (plaintiff in error herein), (Docket No. 927 of the Supreme Court of the Territory of Hawaii), a manifest error has happened, to the great damage of the said Mary N. Lucas, as is said and appears by the complaint: We, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, DO COMMAND YOU, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States Circuit Court of Appeals

for the Ninth Circuit, at the courtrooms of said court in the City of San Francisco, State of California, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 23d day of August next, that the record and proceedings aforesaid being inspected, the said justices of the said Circuit Court of Appeals may cause further to be done therein, to correct [143] that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 25th day of July, in the year of our Lord one thousand nine hundred and sixteen and of the Independence of the United States the one hundred and forty-first.

[Seal]

J. A. THOMPSON,

Clerk of the Supreme Court of the Territory of Hawaii.

The foregoing writ is hereby allowed, this 25th day of July, 1916.

[Seal]

A. G. M. ROBERTSON,

Chief Justice of the Supreme Court of the Territory of Hawaii. [144]

[Endorsed]: No. 927. Mary N. Lucas, Defendant, Plaintiff in Error, v. Walter W. Scott et al., Plaintiffs, Defendants in Error. Writ of Error. Filed July 25, 1916, at 11:45 A. M. J. A. Thompson, Clerk. [145]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

To Walter W. Scott, Janet M. Scott, and Rubena F. Scott, Minors, and the Bishop Trust Company, Limited, a Corporation, Guardian of the Estate of said Walter W. Scott, Janet M. Scott and Rubena F. Scott, Minors, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within thirty days after the date of this citation, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Territory of Hawaii, wherein Mary N. Lucas is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, Mary N. Lucas, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 25th day of July, 1916.

[Seal] A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii.

Due and proper service of the above citation and receipt [146] of a true copy thereof this 25th day

of July, 1916, is hereby admitted.

WALTER W. SCOTT, a Minor,
JANET M. SCOTT, a Minor,
RUBENA F. SCOTT, a Minor, and
THE BISHOP TRUST COMPANY, LIM-
ITED, a Corporation, Guardian of the
Estate of said Walter W. Scott, Janet M.
Scott and Rubena F. Scott, Minors,
By Their Attorney,
E. A. MOTT-SMITH. [147]

[Endorsed]: No. 927. Mary N. Lucas, Plaintiff in Error, v. Walter W. Scott et al., Defendants in Error. Citation on Writ of Error. Filed July 25, 1916, at 11:45 A. M. J. A. Thompson, Clerk.

Issued for service July 25, 1916, at 11:45 A. M. J. A. Thompson, Clerk.

Returned July 31, 1916, at 9:50 A. M. J. A. Thompson, Clerk. [148]

In the Supreme Court of the Territory of Hawaii,
October Term, 1915.

BEFORE THE JUSTICES OF SAID COURT.

MARY N. LUCAS,

Defendant, Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M.
SCOTT, a Minor, RUBENA F. SCOTT, a
Minor, and the BISHOP TRUST COM-
PANY, LIMITED, a Corporation, Guardian

of the Estate of Said WALTER W. SCOTT,
JANET M. SCOTT and RUBENA F.
SCOTT, Minors,

Plaintiffs, Defendants in Error.

Direction for Service of Papers on Writ of Error.

United States of America,

Territory of Hawaii,—ss.

To the High Sheriff of the Territory of Hawaii or
His Deputy; the Sheriff of the City and
[Seal] County of Honolulu or His Deputy; the
Sheriff of the County of Kauai or His
Deputy:

You are commanded to serve upon Walter W.
Scott, Janet M. Scott and Rubena F. Scott, minors,
and the Bishop Trust Company, Limited, Guardian
of the estate of said Walter W. Scott, Janet M.
Scott and Rubena F. Scott, minors, the Writ of
Error and Citation on Error in the above-entitled
cause and each and all of the other papers herein-
below enumerated, to wit: [149]

Petition for Writ of Error and Supersedeas, with
affidavit of Antonio Perry;

Assignment of Errors;

Order Allowing Writ of Error and Supersedeas;

Supersedeas and Cost Bond on Writ of Error;

Order Extending Time for Preparation and Trans-
mission of Record;

Praecipe for Transcript;

Certificate of Clerk to Transcript of Record and Re-
turn to Writ of Error;

Direction for Service of Writ, Citation and other papers;

Statement of Errors and Record Relied upon, addressed to the Clerk of United States Circuit Court of Appeals for Ninth Circuit;

Statement of Errors and Record Relied upon, addressed to defendants in error and their attorney.

And to so serve the said papers by delivering to each of the parties hereinabove named copies thereof and at the same time exhibiting the originals.

And make full return of your proceedings hereunder.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 25th day of July, 1916.

J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of Hawaii.

The foregoing Direction for Service is hereby authorized and allowed this 25th day of July, 1916.

[Seal] A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory of Hawaii. [150]

Return of Service.

Executed the foregoing Direction for Service and served the following papers as follows:

By delivering a true and attested copy of:

The Writ of Error;

Citation on Error;

Petition for Writ of Error and Supersedeas
with Affidavit of Antonio Perry;

Assignment of Errors;

Order Allowing Writ of Error and Supersedeas;

Supersedeas and Cost Bond on Writ of Error;

Order Extending Time for Preparation and Transmission of Record;

Praeceptum for Transcript;

Direction for Service of Writ, Citation and other papers;

Statement of Errors and Record Relied upon, addressed to the Clerk of United States Circuit Court of Appeals for Ninth Circuit;

Statement of Errors and Record Relied upon, addressed to defendants in error and their attorney,

to each of the following persons, to wit:

WALTER W. SCOTT, a minor, at Lihue,
District of Lihue, County of Kauai,
T. H.

JANET M. SCOTT, a minor, and

RUBENA F. SCOTT, a minor, at Manini,
District of Kawaihau, County of Kauai,
T. H.

and at the same time showing them the originals of all of the said documents, on the 26th day of July, 1916.

Dated, Lihue, Kauai, T. H., July 26th, 1916.

[Seal]

WM. HENRY RICE,

Sheriff, County of Kauai, T. H. [151]

Acceptance of Service.

Service of the aforesaid Writ of Error, Citation on Error, and all the other papers by the foregoing Direction for Service directed to be served, is hereby admitted and accepted, this 25th day of July, 1916.

WALTER W. SCOTT,
JANET M. SCOTT, and
RUBENA F. SCOTT, Minors, and the
BISHOP TRUST COMPANY, LIMITED,
a Corporation, Guardian of the Estate of
said Walter W. Scott, Janet M. Scott,
and Rubena F. Scott, Minors,

Defendants in Error,

By their Attorney,

E. A. MOTT-SMITH,

WALTER W. SCOTT,
JANET M. SCOTT, and

RUBENA F. SCOTT, Minors,
By the Guardian of Their Estate,
THE BISHOP TRUST COMPANY, LIM-
ITED,

The latter by

E. A. MOTT-SMITH,

Its Vice-President, and

[Seal]

WM. SIMPSON,

Its Assistant Treasurer. [152]

[Endorsed]: No. 927. Supreme Court, Territory of Hawaii, October Term 1915, Before the Justices. Mary N. Lucas, Defendant, Plaintiff in Error, v. Walter W. Scott et al., Plaintiffs, Defendants in Error. Direction for Service

with Return and Acceptance of Service. Filed and Issued July 25, 1916 at 11:45 A. M. J. A. Thompson, Clerk.

Returned July 31, 1916 at 9:50 A. M.

J. A. THOMPSON,
Clerk. [153]

In the Supreme Court of the Territory of Hawaii,
October Term, 1915.

BEFORE THE JUSTICES OF SAID COURT.
MARY N. LUCAS,

Defendant, Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT, a Minor, RUBENA F. SCOTT, a Minor, and the BISHOP TRUST COMPANY, LIMITED, a Corporation, Guardian of the Estate of Said WALTER W. SCOTT, JANET M. SCOTT and RUBENA F. SCOTT, Minors,

Plaintiffs, Defendants in Error.

**Order Extending Time for Preparation and
Transmission of Record.**

Upon the application of the plaintiff in error and good cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit, IT IS HEREBY ORDERED that the plaintiff in error, Mary N. Lucas, and the Clerk of this Court be and they hereby are allowed until and including the 15th day of September, 1916, within which time to prepare and

transmit to the clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record in the above-entitled cause on assignment of errors in this court, together with said assignment of errors and all other papers required as part of said record.

Dated at Honolulu, T. H., July 25, 1916.

[Seal] A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii. [154]

This order is consented to, July 25, 1916.

E. A. MOTT-SMITH,
Attorney for Defendants in Error. [155]

[Endorsed]: No. 927. Supreme Court, Territory of Hawaii. October Term, 1915. Before the Justices. Mary N. Lucas, Defendant, Plaintiff in Error, vs. Walter W. Scott et al., Plaintiffs, Defendants in Error. Order Extending Time for Preparation and Transmission of Record. Filed July 25, 1916, at 11:45 A. M. J. A. Thompson, Clerk. [156]

In the Supreme Court of the Territory of Hawaii.
October Term, 1915.

BEFORE JUSTICES OF SAID COURT.

MARY N. LUCAS,

Defendant, Plaintiff in Error,

vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT,
a Minor, RUBENA F. SCOTT, a Minor, and
the BISHOP TRUST COMPANY, LIM-

ITED, a Corporation, Guardian of the Estate
of Said WALTER W. SCOTT, JANET M.
SCOTT and RUBENA SCOTT, Minors,
Plaintiffs, Defendants in Error.

**Certificate of Clerk to Transcript of Record and
Return to Writ of Error.**

Territory of Hawaii,

City and County of Honolulu,—ss.

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii, by virtue of the foregoing Writ of Error and in obedience thereto, the original of which said Writ of Error is herewith returned, being pages 143 to 145, both inclusive, of the foregoing transcript, and in pursuance of the praecipe to me directed, a copy whereof is hereto attached, being pages 137 to 142, both inclusive, DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of [157] record, being pages 1 to 136, both inclusive, and DO HEREBY CERTIFY the same to be full, true and correct copies of the pleadings, exhibits, record, proceedings, opinions and final judgment which are on file and of record in the office of the clerk of the Supreme Court of the Territory of Hawaii in the case entitled in the said court, "Walter W. Scott, a minor, Janet M. Scott, a minor, Rubena F. Scott, a minor, and the Bishop Trust Company, Limited, a Corporation, guardian of the estate of said Walter W. Scott, Janet M. Scott, and Rubena F. Scott, minors, Plaintiffs, v. Mary N. Lucas, Defendant," and in said Supreme

Court numbered and docketed as Number 927.

I do further certify that the original Citation on Writ of Error, with Direction for Service, Return of Service and Acknowledgment of Service thereof, being pages 146 to 153, both inclusive, and the original Order Extending Time for Preparation and Transmission of Record, being pages 154 to 156, both inclusive, of the foregoing transcript of Record, are hereto attached and are herewith returned.

I also certify that the cost of the foregoing transcript of record is Thirty-eight and 95/100 (\$38.95) Dollars, and that said amount has been paid by Mary N. Lucas, the plaintiff in error herein.

In testimony whereof I have hereunto set my hand and affixed the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, Oahu, Territory of Hawaii, this 1st day of August, A. D. 1916.

[Seal]

JAMES A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii. [158]

[Endorsed]: No. 2840. United States Circuit Court of Appeals for the Ninth Circuit. Mary N. Lucas, Plaintiff in Error, vs. Walter W. Scott, a Minor, Janet M. Scott a Minor, Rubena F. Scott, a Minor, and The Bishop Trust Company, Limited, a Corporation, Guardian of the Estate of Said Walter W. Scott, Janet M. Scott and Rubena F. Scott, Minors, Defendants in Error. Transcript of Record.

Upon Writ of Error to the Supreme Court of the Territory of Hawaii.

Filed August 9, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

ON WRIT OF ERROR TO THE SUPREME
COURT OF TERRITORY OF HAWAII.

MARY N. LUCAS,
Defendant, Plaintiff in Error,
vs.

WALTER W. SCOTT, a Minor, JANET M. SCOTT,
a Minor, RUBENA F. SCOTT, a Minor, and
the BISHOP TRUST COMPANY, LIM-
ITED, a Corporation, Guardian of the Estate
of Said WALTER W. SCOTT, JANET M.
SCOTT and RUBENA F. SCOTT, Minors.
Plaintiffs, Defendants in Error.

Direction Re Printing of Record in Appellate Court.
To the Clerk of the Above-entitled Court:

Lest the papers already filed in the above-entitled cause and which are being forwarded to you by the clerk of the Supreme Court of Hawaii do not make the matter sufficiently clear, permit me to add that we desire to have printed all of the record in the

case as the same is enumerated and designated in the Praecipe for Transcript and as forwarded to you by the clerk of the Supreme Court of Hawaii in answer to the Writ of Error. Neither side feels that the printing of less than the whole record forwarded to you will suffice.

Dated, Honolulu, T. H., July 26, 1916.

MARY N. LUCAS,
By Her Attorney,
ANTONIO PERRY.

Waiving the delay of ten days or any other delay which may be permitted to us, we also think that the whole record forwarded to you should be printed as the Record on Appeal.

Dated, Honolulu, T. H., July 26, 1916.

E. A. MOTT-SMITH,
Attorney for the Defendants in Error.

[Endorsed]: 2840. United States Circuit Court of Appeals, Ninth Circuit. Mary N. Lucas, Plaintiff in Error, vs. Walter W. Scott et al., Defendants in Error. Direction Re Printing of Record. Filed Aug. 9, 1916. F. D. Monckton, Clerk.